

ACTIVITIES OF FEDERAL LAW ENFORCEMENT AGENCIES  
TOWARD THE BRANCH DAVIDIANS  
(PART 1)

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JOINT HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON CRIME  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
AND THE  
SUBCOMMITTEE ON  
NATIONAL SECURITY, INTERNATIONAL  
AFFAIRS, AND CRIMINAL JUSTICE  
OF THE  
COMMITTEE ON  
GOVERNMENT REFORM AND OVERSIGHT  
ONE HUNDRED FOURTH CONGRESS  
FIRST SESSION

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# ACTIVITIES OF FEDERAL LAW ENFORCEMENT AGENCIES TOWARD THE BRANCH DAVIDIANS

## (Part 1)

---

WEDNESDAY, JULY 19, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CRIME,  
COMMITTEE ON THE JUDICIARY, JOINTLY WITH THE  
SUBCOMMITTEE ON NATIONAL SECURITY, INTER-  
NATIONAL AFFAIRS, AND CRIMINAL JUSTICE, COMMIT-  
TEE ON GOVERNMENT REFORM AND OVERSIGHT,

*Washington, DC.*

The subcommittees met, pursuant to notice, at 10:04 a.m., in room 2141, Rayburn House Office Building, Hon. William H. Zeliff, Jr. (chairman of the Subcommittee on National Security, International Affairs, and Criminal Justice) presiding and Hon. Bill McCollum (chairman of the Subcommittee on Crime).

Present from the Subcommittee on National Security, International Affairs, and Criminal Justice: William H. Zeliff, Jr., Robert L. Ehrlich, Jr., Steven Schiff, Ileana Ros-Lehtinen, John L. Mica, Peter Blute, Mark E. Souder, John B. Shadegg, Karen L. Thurman, Robert E. Wise, Jr., Gene Taylor, Tom Lantos, Louise McIntosh Slaughter, Gary A. Condit, and Bill K. Brewster.

Present from the Subcommittee on Crime: Representatives Bill McCollum, Steven Schiff, Stephen E. Buyer, Howard Coble, Fred Heineman, Ed Bryant of Tennessee, Steve Chabot, Bob Barr, Charles E. Schumer, Robert C. Scott, Zoe Lofgren, Sheila Jackson Lee, and Melvin L. Watt.

Also present from the Committee on Government Reform and Oversight: Representatives William F. Clinger, Jr., Cardiss Collins of Illinois, and Gene Green of Texas.

Also present from the Committee on the Judiciary: Representatives Henry J. Hyde and John Conyers, Jr.

Also present: Representatives Joe Skeen and Chet Edwards.

Staff present from the Subcommittee on National Security, International Affairs, and Criminal Justice: Robert Charles, staff director and chief counsel; L. Stephan Vincze, defense counsel; T. March Bell, counsel for justice affairs; Marshall Cobleigh, senior policy advisor; Michele Lang, special counsel; and Sean Littlefield, special assistant and clerk; Committee on Government Reform and Oversight: Kevin Sabo, general counsel; Judith McCoy, chief clerk; Jeffrey Wilmot, professional staff member; Bud Myers, minority staff director; David Schooler, minority chief counsel; Ronald Stroman, minority deputy staff director; Donald Goldberg, minority assistant

to counsel; Cherri Branson, minority professional staff member; Ellen Rayner, minority chief clerk; Cecelia Morton, minority office manager; and Eddie Arnold, minority public affairs officer.

Staff present from the Subcommittee on Crime: Paul J. McNulty, chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, assistant counsel; and Audray L. Clement, clerk; Committee on the Judiciary: Alan F. Coffey, Jr., general counsel/staff director; Dan Freeman, parliamentarian; Julian Epstein, minority staff director; Perry Apfelbaum, minority general counsel; Melanie Sloan, minority counsel; and Tom Diaz, minority counsel.

#### **OPENING STATEMENT OF CHAIRMAN ZELIFF**

Mr. ZELIFF. Good morning. The joint hearing of the Oversight Subcommittee on National Security, International Affairs, and Criminal Justice, and the Judiciary Subcommittee on Crime will now come to order.

We would like to welcome all those present, our witnesses for the first day's panels, the public, and my friends in both the Oversight and Judiciary Subcommittees. I would especially like to welcome my cochairman during these hearings, Chairman Bill McCollum of Florida.

Mr. MCCOLLUM. My pleasure.

Mr. ZELIFF. Without further ado then, we will move to opening statements. We will hear first from the majority subcommittee Chairs then subcommittee minority ranking members, then the full Chairs and ranking members. We will then hear from our opening panel. All remaining members may submit copies of opening statements for the record.

Today two subcommittees undertake historic joint hearings on executive branch conduct that led up to the events in Waco, TX, in 1993. These hearings were planned in early February by the subcommittees that are here today: The Oversight Subcommittee on National Security, International Affairs, and Criminal Justice, which I chair, and the Judiciary Subcommittee on Crime, which Congressman McCollum chairs.

These hearings are being held because very important questions—questions that still trouble the American public and many of us in Congress—have not yet been answered. They are being held because hearings in 1993 in the Waco tragedy lacked vital information, information that we now have today.

Today's hearings are the result of an extensive, 5-month congressional investigation. Tens of thousands of documents have been reviewed, hundreds of potential witnesses have been interviewed.

In human terms, these hearings are about a tragic loss of life. Four brave, young law enforcement officers lost their lives on February 28, 1993. A planned raid went badly and off course. These four agents, dedicated and proud, deserve our full respect. They did not choose to die, but like many others in the law enforcement community, they chose to serve.

In these hearings, we will honor them and we will seek accountability and responsibility. These four young men, so that the Nation may know their supreme sacrifice, are Conway LeBleu, who was 30; Todd McKeehan, who was 28; Robert Williams, who was 26; and Steven Willis, who was 32. If we can get to the bottom of



what went wrong and why, these lives will not have been given in vain.

But this is a complex event. On April 19, 1993, after a 51-day siege, our decisions led to the use of so-called CS gas, and a fire broke out. The fire rapidly consumed the entire Davidian compound, killing all 22 innocent children and more than 60 adults.

The truth behind that part of the tragedy is also important, and it is the obligation of those who have responsibility for oversight to pursue the truth relentlessly. Speaking for myself, that is what I am here today to do—to find the truth. Let the chips fall where they may.

At their core, these hearings are about how a constitutional government works, about how one branch of the Federal Government oversees the activities of another. About how we, as Americans, seek after the truth and do not rest until we get accountability and responsibility. Oversight is good. In fact, it is the genius of our constitutional system of government.

These hearings are also about difficult legal and policy decisions.

Did agents die because a well-planned raid was hurriedly executed, despite the loss of surprise? Or was the plan itself flawed? Who approved the raid and the original plan? Where are the commanders who ordered it? How did the Treasury, when it reviewed its own behavior, reach its conclusions?

On the use of military personnel and heavy equipment against U.S. citizens, other questions linger. How much was used and why? What was the legal justification? Was there a drug connection or not? Why did we need so much force? What are the legal limits and were they violated?

On the use of CS gas, did the Justice Department know that it could seriously harm children? Did the President know? Who advised the Attorney General and who advised the President? Was the Attorney General pressured by the White House to end the siege? What were the roles of Webster Hubbell and Vince Foster? Who actually made the decision to use CS gas with 22 children inside the Davidian compound? After 2 years, why is there still no clear answer?

Finally, what can we do to keep a tragedy like this from happening again? What lessons have we learned, and what lessons did we learn about having agencies do their own reviews?

In these hearings, we will hear nearly 90 witnesses. They have all been called to tell their accounts. All will testify under an oath to tell the truth, the whole truth, and nothing but the truth.

At the end of the hearings, my hope is that lingering doubts about what happened on February 28 and April 19, questions about who ordered these events and why, will be answered. Some facts may never be known. But most significant facts will be, for the first time, openly and vigorously discussed.

Three last points.

First, I spent the better part of my life supporting and being supported by law enforcement. I come from New Hampshire and, up there, we have great respect for our law enforcement people.

Second, many have tried to take these hearings off track. Once and for all, these hearings are not about the Oklahoma City bomb-

ing, the Brady bill, the issue of gun control, or any other issue. They are about constitutional oversight. We have sought factual information from every available source. We have done so doggedly. And I am proud of that. I make no apology for seeking the truth. And I will add there may be greater accommodation of the minority party than in any oversight hearing that I am aware of during the past 40 years.

One last final point. As we listen carefully to every witness and as we search together for the answers to the many unanswered questions surrounding the events at Waco, I would urge my colleagues to back away from the attraction of political rhetoric. Americans are a very forgiving people. They seek the truth and they will accept nothing less.

If we can perform that function for them, not as Republicans, not as Democrats, but as truth-seeking Americans doing our oversight role, there will be no more Wacos. That is my personal prayer. And I urge you all to join me in that effort. Thank you.

[The opening statement of Mr. Zeff follows:]

OPENING STATEMENT OF HON. WILLIAM H. ZELIFF, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE, AND CHAIRMAN, SUBCOMMITTEE ON NATIONAL SECURITY, INTERNATIONAL AFFAIRS, AND CRIMINAL JUSTICE

Today, two subcommittees undertake historic, joint hearings on executive branch conduct regarding the events at Waco, Texas in 1993. These hearings were planned in early February by the subcommittees that are here today—the oversight subcommittee on national security, international affairs and criminal justice, which I chair, and the Judiciary Subcommittee on Crime, which Congressman McCollum chairs.

These hearings are being held because many important questions—questions that still trouble the American public and many in Congress—have not yet been answered. They are being held because hearings in 1993 on the Waco tragedy lacked vital information, information that we have today.

Today's hearings are the result of an extensive, five-month congressional investigation. Tens of thousands of documents have been reviewed. Hundreds of potential witnesses have been interviewed.

In human terms, these hearings are about a tragic loss of life. Four brave, young law enforcement officers lost their lives on February 28, 1993. A planned raid went badly off course. These four agents, dedicated and proud, deserve our full respect. They did not choose to die, but like many others in the law enforcement community chose to serve. In these hearings, we will honor them and we will seek accountability. These four young men, so that the nation may know their supreme sacrifice, are Conway Lebleu, who was 30, Todd McKeenan, who was 28, Robert Williams, who was just 26, and Steven Willis, who was 32. If we can get to the bottom of what went wrong and why, their lives will not have been given in vain.

But this is a complex event. On April 19, 1993, after a 51-day siege, other decisions led to the use of so-called C-S gas, and a fire broke out. The fire rapidly consumed the entire Davidian compound, killing all 22 innocent children and more than 60 adults. The truth behind that part of the tragedy is also important, and it is the obligation of those who have responsibility for oversight to pursue the truth unremittably. Speaking for myself, that is what I am here for—to find the truth. Let the chips fall where they may.

At their core, these hearings are about how a constitutional government works, about how one branch of our Federal Government oversees the activities of another. About how we, as Americans, seek after the truth and do not rest until we get accountability. Oversight is good—in fact, it is the genius of our constitutional system of government.

These hearings are also about difficult legal and policy questions.

Did agents die because a well-planned raid was hurriedly executed, despite the loss of surprise? Or was the plan itself flawed? Who approved the raid and the original plan? Where are the commanders who ordered it? How did the Treasury, when it reviewed its own behavior, reach its conclusions?

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In these hearing, you will hear nearly 70 witnesses. They have all been called to tell their accounts. All will testify under an oath to tell the truth, the whole truth and nothing but the truth.

At the end of the hearings, my hope is that lingering doubts about what happened on February 28 and April 19, questions about who ordered these events and why—will be answered. Some facts may never be known. But most significant facts will be, for the first time, openly and vigorously discussed.

Three last points.

First, I have spent the better part of my life supporting and being supported by law enforcement. I come from New Hampshire, and up there we have great respect for law enforcement. I have the support of ten sheriffs out of ten in our State, Republicans and Democrats. The reason is pretty simple. I have an extraordinary respect for the men and women who put their lives on the line—every day—to protect us and to protect our Nation.

Second, many have tried to take these hearings off track. Once and for all, these hearings are not about the Oklahoma City bombing, the Brady Bill, militias, gun control, or any other issue. They are about constitutional oversight. We have sought factual information from every available source. We have done so doggedly. I am proud of that. I make no apology for seeking the truth. And I will add that there has been greater accommodation of the minority party in these hearings than in any oversight hearing I know of during the past 40 years.

And one final point. As we listen carefully to every witness, and as we search together for the answers to the many unanswered questions surrounding the events at Waco, I would urge my colleagues to back away from the attraction of political rhetoric. We do not have the luxury of rhetoric. The American people do not want more words. They want the truth. They want accountability, and then they want to put this whole tragic event behind them. If we can perform that function for them, not as Republicans and as Democrats, but as truth-seeking Americans—there will be no more Wacos. That is my personal prayer. And I urge you all to join me in that effort. Thank you.

Mr. ZELIFF. The Chair recognizes and introduces the cochairman of the joint subcommittees and the chairman of the Judiciary Committee's Crime Subcommittee, my good friend, Bill McCollum of Florida.

#### **OPENING STATEMENT OF CHAIRMAN McCOLLUM**

Mr. McCOLLUM. Thank you very much, Chairman Zeliff. I am very pleased to be here, to be chairing these hearings with you over the next 8 days.

Steven Willis, Conway LeBleu, Todd McKeehan, Robert Williams. You don't know these men but they are four of the reasons why congressional hearings into the events surrounding Waco will be held this week and next. These four Federal law enforcement agents were among the more than 90 Americans killed in the single most fatal episode in the history of Federal law enforcement, the calamitous incident at Waco.

Last week, a New York Times editorial called it one of the biggest law enforcement fiascos in recent memory. The disturbing truth is that all of these deaths were the direct result of Federal Government action. This tragedy has added to the distrust of the Federal Government and specifically Federal law enforcement. The

deadly mishandling of the crisis and the ensuing mistrust is why Congress must independently investigate all of the events surrounding Waco.

In looking at this, the basic fact remains, no matter how you look at it, that more than 90 people, including four law enforcement officers and 22 children, died as a direct result or indirect result of Federal Government action. Unavoidable, some say. Maybe so, but before we close the book on those 90 human beings, we had better be very sure we know exactly what happened, ensure that everyone that should be held accountable is held accountable, and determine how we can avoid such tragedies in the future.

There is a woman in the audience today whose husband, an ATF agent for 17 years, was wounded during the raid. She traveled a long way just to remind us that there is a very painful side to Waco besides the deaths of those that I mentioned. She describes her husband as a man of high integrity who witnessed horrors on that fateful day in February 1992 that were worse than anything he saw in Vietnam.

This devoted wife came to Washington to tell us not to forget the sacrifices of the wives and children of the thousands of brave agents like her husband. Well, let me assure you, ma'am, that we will not forget. In fact, when these hearings are over, it is my hope that law enforcement officers will be safer because of the supervisors and political officials who give them their orders will be more vigilant when placing them in harm's way.

The fact of the matter is that there are a lot of questions that have to be answered when we go through this process. The four main objectives of the hearings are: One, to probe the lingering questions; two, uncover the errors; three, find out who should be held accountable; and four, craft reforms to prevent these mistakes from happening again.

In looking at the questions that are out there to be answered, there are a number of those. The toughest of those questions are: Were ATF supervisors predisposed towards using military-like tactics to serve a warrant? Could David Koresh have been apprehended outside the compound, making the execution of the search warrant safer? Did senior Treasury Department officials warn ATF to call off the raid if the element of surprise was lost or was that added to the story after the fact? Did ATF purposely mislead the U.S. Army when it claimed that there was a drug lab inside of the Davidian compound? Was the judgment of Attorney General Janet Reno and others in the administration to use CS gas and storm the compound reasonable? Could the ATF and FBI have delayed the assault or handled the entire operation differently? If so, would the 4 ATF agents and 86 other Americans be alive today?

We still have not uncovered the truth. That is, the handling of crisis and the ensuing mistrust is why we are here independently examining this question. I want to assure the American people that those responsible will be held accountable for their actions. These hearings are a step in that direction.

Until we learn the truth and restore accountability to Government, we cannot begin to rebuild our citizens' faith in Federal law enforcement. Let me be clear: We cannot anticipate every future crisis, but we can be better prepared and not have Federal law en-

forcement repeat the errors of Waco. If these hearings can prevent another Waco, I feel that they have been a success.

Now today's Washington Post says, in a headline: "Clinton Team Focuses Damage Control on Waco." We are not here for damage control. The article describes how White House political operatives in coordination with the Treasury and outside damage control czar went to work to prepare for these hearings, et cetera.

Let me assure everyone here these hearings will be objective, they will be fair and they will be thorough. At the end of the day, we will have as many of the answers as we can possibly have. The chips will fall where they may. They will be some of the questions that have been raised that will be corroborated, some full of the issues that have been raised as very damaging to the administration may be corroborated.

There are going to be quite a number that come out on the other side of the coin because there are a lot of conspiracy theories running around out there that I really believe, after the sun is set, we will find are unfounded.

I am not here to prejudge. That is why we are having this hearing. We are here to find the answers, to go back and review what we have to review. At the end of all of this, we must restore confidence in the rule of law and in the Federal Government and its Federal law enforcement arm.

That is what these hearings are about. That, and keeping the faith not only with American people but with the families of those who were wounded or killed at Waco and the faith of the families of those many men and women in law enforcement throughout this Nation of all persuasions, at all levels of government.

Thank you, Mr. Chairman.

[The opening statement of Mr. McCollum follows:]

OPENING STATEMENT OF HON. BILL MCCOLLUM, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF FLORIDA, AND CHAIRMAN, SUBCOMMITTEE ON CRIME

Steven Willis, Conway LeBleu, Todd McKeenan, and Robert Williams.

You don't know these men. But they are four of the reasons why congressional hearings into the events surrounding Waco will be held this week and next. These four Federal law enforcement agents were among more than 90 Americans killed in the single most fatal episode in the history of federal law enforcement—the calamitous incident at Waco.

Last week a New York Times editorial called it one of the "biggest law enforcement fiascos in recent memory."

The disturbing truth is that all of these deaths were the direct result of federal government action. This tragic incident has added to the distrust of the federal government, and specifically federal law enforcement. And we still don't have the truth. The deadly mishandling of the crisis and the ensuing mistrust is why Congress must independently investigate all events surrounding Waco.

The basic fact is that more than 90 people, including four law enforcement officers and 22 children, died as a result of federal government action. Unavoidable some say? Maybe. But before we close the book on those 90 human beings we better be sure we know exactly what happened.

The four main objectives of the hearings are: (1) probe the lingering questions; (2) uncover the errors; (3) find out who should be held accountable; and (4) craft reforms to prevent these mistakes from happening again.

Until we learn the truth and restore accountability to government, we cannot begin to rebuild faith in federal law enforcement. Congress must restore faith, for a democracy built on the principle of rule by law cannot long exist if its citizens distrust those who enforce such laws.

There's a woman in the audience here today whose husband, and ATF agent for 17 years, was wounded during the raid. She traveled a long way just to remind us that there is another very painful side to the Waco story. She describes her husband

as a man of high integrity who witnessed horrors on that fateful day in February of 1992 that were worse than anything he saw in Vietnam. This devoted wife came to Washington to tell us not to forget the sacrifices of the wives and children of the thousands of brave agents like her husband. Well, let me assure you ma'am, that we will not forget. In fact, when these hearings are over, it is my hope that law enforcement officers will be safer because the supervisors and political officials who give them their orders will be more vigilant when placing them in harm's way.

To find the answers, we will be asking the toughest questions. Were ATF supervisors predisposed towards using military-like tactics to serve a warrant? Could David Koresh have been apprehended outside of the compound, making the execution of the search warrant safer? Did senior Treasury Department officials warn ATF to call off the raid if the "element of surprise" was lost, or was that added to the story after the fact? Did ATF purposely mislead the U.S. Army when it claimed there was a drug lab inside the Davidian compound? Was the judgement of Attorney General Janet Reno and others in the administration to use CS gas and storm the compound reasonable?

Essentially, could the ATF and FBI have delayed the assault or handled the entire operation differently? If so, would the four ATF agents and 86 other Americans be alive today?

I want to assure the American people that those responsible will be held accountable for their actions. These hearings are a step in that direction. Until we learn the truth and restore accountability to government, we cannot begin to rebuild our citizens' faith in federal law enforcement.

Let me be clear: we cannot anticipate every future crisis. But we can be better prepared and not have federal law enforcement repeat the errors of Waco. If these hearings can prevent another Waco, I feel they will have been a success.

Today's Washington Post says "Clinton Team Focuses Damage Control on Waco". We are not here for "damage control". The article describes how White House political operatives in coordination with Treasury officials and an outside "damage control czar" are doing their best to put a positive spin on a tragic situation. These hearings will not tolerate damage control. They will be objective. They will be thorough. And at the end of the day, we will have answers.

Mr. ZELIFF. Thank you.

The Chair now recognizes the ranking minority member of the Oversight Committee, also National Security and Criminal Justice Subcommittee, my good friend, Karen Thurman, from Florida.

Mrs. THURMAN. Thank you, Mr. Chairman.

Today, we begin 8 days of hearings devoted to the tragic events that took place 2 years ago at the Branch Davidian compound outside Waco, TX.

There is a great deal of national interest in our proceedings. Chairman Zeliff and Chairman McCollum, let me state right from the beginning and for the record that I am glad to hear that you hope that these in-the-public pronouncements about this process being fair and nonpartisan are accurate because we must not lose sight of our mission and who we serve: The American people.

It would truly be a tragedy if we wasted taxpayers' dollars on a political sideshow that added nothing to the body of knowledge we already have concerning this incident. Remember, these kinds of events happen regardless of which party occupies the White House, and I believe we should proceed with that in mind. Subverting these hearings to a political agenda will do nothing for the reputation of either this Congress or our law enforcement.

I do believe that the events at Waco deserve deeper examination. We need to fully understand exactly where mistakes were made, both in planning and performance, and to ensure that they never happen again. And the only way this can be achieved is through impartiality and openness.

Let us not forget why we are here this morning. Four law enforcement officers lost their lives. Twenty were seriously injured

and more than eighty people died at the Branch Davidian compound. We must never allow our work here to drift away from the incident of those families who lost loved ones.

David Koresh and his followers were under intense scrutiny by local officials. After all, it was local law enforcement responding to very suspicious activities who contacted Federal authorities. The ATF obtained a lawful warrant which subsequently was not challenged in court cases involving surviving Davidians.

In trying to serve the warrant, officers came under heavy gunfire after a cease-fire was negotiated. The FBI took control of the scene and attempted to negotiate a settlement that prevented any further loss of life. Unfortunately, the agency was only partially successful. Some adults and children left the compound in the days following February 28, 1993. But on April 19, the Branch Davidian compound erupted in fire.

There are obvious and distressing problems surrounding the strategy and actions of both the ATF and the FBI and they must be examined and resolved. The Department of the Treasury issued an exhaustive report that strongly criticized the plan of the ATF. However, some questions still remain. If our Government Reform and Oversight Subcommittee is to achieve its mission, then we must conduct fair and proper oversight.

Finally, Mr. Chairman, I want to reiterate that my purpose over the next 8 days is to see what went wrong, to determine if the problems have been corrected, and to make sure we do not engage in trivial partisan politics. I want my constituents and the American people to know that government, while far from being perfect, works for them.

If these hearings produce a clearer understanding of what really happened at Waco, then we have done our jobs well. Otherwise, the public will only be left with questions, hearsay, and more reasons to doubt and mistrust us.

Let us not follow the tragedy at Waco with a tragedy of Waco hearings. Let us have the heat of passionate debate, but the light of understanding and the certainty that only true knowledge can bring.

Thank you.

[The prepared statement of Mrs. Thurman follows:]

PREPARED STATEMENT OF HON. KAREN L. THURMAN, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF FLORIDA

Thank you, Mr. Chairman. Today we begin eight days of hearings devoted to the tragic events that took place two years ago at the Branch Davidian Compound outside Waco, Texas.

There is a great deal of national interest in our proceedings. Chairman Zeff and Chairman McCollum, let me state right from the beginning and for the record that I hope your public pronouncements about this process being fair and nonpartisan are accurate.

We must not lose sight of that mission and who we serve; the American people. It would truly be a tragedy if we wasted taxpayers' dollars on a political sideshow that added nothing to the body of knowledge we already have concerning this incident. Remember, this kind of event happens regardless of which party occupies the White House. I believe we should proceed with that in mind.

Subverting these hearings to a political agenda will do nothing for the reputation of either this Congress or law enforcement in general.

I do believe that the events at Waco deserve deeper examination. We need to fully understand exactly where mistakes were made, both in planning and performance,

to ensure that they never happen again. The only way this can be achieved is through impartiality and openness.

Let us not forget why we are here this morning. Four law enforcement officers lost their lives, 20 were seriously injured and almost 80 people died at the Branch Davidian Compound. We must never allow our work here to drift away from the interests of those families who lost loved ones.

David Koresh and his followers were under intense scrutiny by local officials. After all, it was local law enforcement, responding to very suspicious activities, who contacted Federal authorities. The ATF obtained a lawful search warrant which subsequently was not challenged in court cases involving the surviving Davidians.

In trying to serve the warrant, officers came under heavy gunfire. After a cease fire was negotiated, the FBI took control of the situation and attempted to negotiate a settlement that prevented further loss of life. Unfortunately, the agency was only partially successful. Some adults and children voluntarily left the compound in the days following February 28, 1993. But on April 19, the Branch Davidian compound erupted in fire.

There are obvious and distressing problems surrounding the strategy and actions of both the ATF and the FBI and they must be examined and resolved. The Department of Treasury issued an exhaustive report that strongly criticized the actions of the ATF. However, some questions still remain. If our Government Reform and Oversight Subcommittee is to achieve its mission, then we must conduct fair and proper oversight.

Finally Mr. Chairman, I want to reiterate that my purpose over the next eight days is to see what went wrong, to determine if the problems have been corrected, and to make sure we do not engage in trivial partisan politics. I want my constituents and the American people to know that government, while far from perfect, works for them. If these hearings produce a clearer understanding of what really happened at Waco, then we will have done our jobs well.

Otherwise, the public will only be left with questions, hearsay and more reasons to doubt and mistrust its government.

Let us not follow the tragedy at Waco with the tragedy of the Waco hearings. Let us not only have the heat of passionate debate, but the light of understanding and the certainty that only true knowledge can bring.

Thank you Mr. Chairman.

Mr. ZELIFF. The Chair now recognizes the ranking minority member of the Crime Subcommittee, Charles Schumer of New York, for his opening statement.

Mr. SCHUMER. Thank you, Mr. Chairman.

And let me begin by saying that I believe with all my heart that we should have hearings on the incident at Waco. This is the first of 8 very sad days. We are going to talk about the deaths of scores of men and women and children, including four ATF agents. If we can learn the lessons of this tragedy by bringing out new facts or even if no new facts come out, by looking at the old facts in a fresh light, then this is a worthy endeavor.

Because in the words of Justice Louis Brandeis, sunlight is the best disinfectant. The danger here is that we won't shine sunlight but rather a strobe light—flashing on and off and distorting our vision.

I have two goals as we enter into these hearings. First, to make the investigation constructive—we interrupt this opening statement for a commercial message.

Mr. ZELIFF. Is that what you consider an outside interest? Go ahead.

Mr. SCHUMER. OK. Are we all set there? We can listen to her.

OK. First is to make this investigation constructive, not destructive and divisive. The ATF and FBI should leave this hearing stronger, better, and more effective at enforcing all our laws, including gun laws. Because when the next David Koresh appears, we don't want law enforcement to make the same mistakes, but we



definitely want the next Koresh apprehended and, if found guilty, then punished.

The men and women of ATF and FBI made terrible mistakes at Waco. Those responsible for our Federal law enforcement agencies have admitted those errors. Law enforcement officials, more than anyone on this panel, feel awfully about the mistakes that cost the lives of four of their colleagues. It is they who go to bed at night thinking about the partners and friends left behind.

And law enforcement officials have made reforms to correct the problems. Nevertheless, if we can leave these hearings with constructive suggestions on how to improve the ATF and the FBI, then they will be a service to the American people.

The second goal is to keep these hearings honest. We will challenge anyone and everyone who presents a bias or factually incorrect view of what happened at Waco. I will not let this become a show trial with law enforcement as the defendant. These Waco hearings must not degenerate into a kangaroo court.

It is unfair for us today to look at what law enforcement did at Waco in a vacuum. And it is unfair to twist the facts making law enforcement the villain and David Koresh the lawbreaker, the victim. That is like saying right is wrong and night is day.

Let us be very clear. David Koresh was a dangerous, sick man who molested children, preached violence, and led his followers into a horrible suicide. David Koresh was not a peaceful cleric in an ivy-covered chapel or even an eccentric with strange religious views. David Koresh was an armed fanatic who was excoriated in his hometown newspaper in a series they entitled, "the Sinful Messiah."

David Koresh sexually abused children and called it holy.

David Koresh was obsessed with guns because he claimed it was commanded by scripture. He hoarded a military arsenal that included at least 48 illegal machineguns and scores of illegal handgrenades.

Remember, ladies and gentlemen, David Koresh and his followers did not greet Federal law enforcement officers with a psalm or a scripture. They greeted them with machineguns and grenades, more firepower than even the ATF agents themselves had. Nothing excuses that ambush. Nothing in American law excuses it. Nothing in the Bible excuses it. You do not meet a warrant with a machinegun, even if you believe the warrant was illegally obtained.

So let us put aside double standards. I doubt that the most vocal critics on this panel would argue for delay if ATF discovered an arsenal of machineguns and handgrenades mere blocks from here in Washington's inner city, and I doubt that today's Monday morning quarterbacks would demand that ATF wait for the advice of sociologists, social workers, neighborhood preachers, and professors of religion before raiding such an arsenal.

From the beginning, and this is my concluding point, from the beginning, these hearings have had the odor of bias hanging over them. And over the last week, we have discovered where that smell is coming from—the National Rifle Association.

We have uncovered covert payments by the NRA to high-priced explosives experts; lawyers associated with the NRA being sneaked onto panels; and finally, a witness who was deceived by NRA em-

ployees passing themselves off as congressional staffers. It is no wonder that the NRA has tried to hide their role in this hearing. Everyone knows their bias. This is the organization that buys advertisements calling law enforcement jackbooted thugs.

Frankly, I don't think that the NRA gives a damn about the tragedy at Waco, but rather wants to destroy the ATF because they enforce the laws that the NRA despises—the Brady law and the assault weapons ban. And I am very troubled that some on the majority staff have conceded at least part of the planning and organization of this hearing to the NRA.

In order to fully understand what happened at Waco, and what went wrong there, we need a fair, impartial, unbiased, and factual investigation. Unfortunately, I cannot today say that the hearing is fully living up to that standard.

We have requested that there be an investigation into the role of the NRA, including questioning under oath employees of the organization and staff members involved in this hearing. So far, our requests have been denied.

Now, you may ask one final question. Who cares whether the NRA is involved or not? Well, it matters because their hatred of the ATF so distorts their view of the incident at Waco that this hearing runs the danger of missing the broader point.

One man bears the ultimate burden for the horrible scar on American history of Waco. This man is David Koresh, the Sinful Messiah. David Koresh is ultimately to blame for the horror of Waco no matter how others seek to twist and revise history.

These hearings must not run away from that fact. They must examine where law enforcement failed and seek to improve, not decimate, the ATF and the FBI. When we run into the next David Koresh, we want smarter law enforcement to avoid the mistakes of Waco and stronger, more effective law enforcement to apprehend and punish those who molest women and children—who molest children and stockpile weapons.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Schumer follows:]

PREPARED STATEMENT OF HON. CHARLES E. SCHUMER, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF NEW YORK

Thank you, Mr. Chairman.

Let me begin by saying that we should be having hearings on the incident at Waco.

This is the first of eight very sad days. We are going to talk about the deaths of scores of men, women and children including four ATF agents.

If we can learn the lessons of this tragedy by bringing out new facts or even—if no new facts come out—by looking at the old facts in a fresh light, then this is a worthy endeavor.

Because, in the words of Justice Louis Brandeis, sunlight is the best disinfectant. The danger here is that we won't shine sunlight but rather a strobe light—flashing on and off—and distorting our vision.

I have two goals as we enter into these hearings:

First, to make the investigation constructive, not destructive and divisive. The Bureau of Alcohol, Tobacco and Firearms and the Federal Bureau of Investigation should leave this hearing stronger, better and more effective at enforcing all our laws, including gun laws. Because, when the next David Koresh appears, we don't want law enforcement to make the same mistakes but we definitely want the next Koresh apprehended and, if found guilty, then punished.

The events at Waco have been scrutinized in seven Congressional hearings, two exhaustive agency reports, and a long trial.

The men and women of ATF and FBI made terrible mistakes at Waco. Those responsible for our federal law enforcement agencies have admitted those errors. Law enforcement officials, more than anyone on this panel, feel awfully about mistakes that cost the lives of four of their colleagues. It is they who go to bed at night thinking about the partners and friends left behind.

And law enforcement officials have made reforms to correct problems. They have tried to heal deep scars and move on to face new crimes and problems.

Nevertheless, if we can leave these hearings with constructive suggestions on how to improve the ATF and the FBI then I will consider them a service to the American people.

The second goal is to keep these hearings honest. We will challenge anyone and everyone who presents a biased or factually incorrect view of what happened at Waco. I will not let this become a show trial with law enforcement as the defendant. These Waco hearings must not degenerate into a kangaroo court.

We owe this to the people who lost their lives at Waco—both civilian and law enforcement—to the people who are concerned about this case—no matter what their views—and to all Americans.

It is unfair for us to today look at what law enforcement did at Waco in a vacuum.

And it is unfair to twist the facts, making law enforcement the villain and David Koresh, the law breaker, the victim. This is like saying right is wrong and night is day.

Let's be very clear, David Koresh was a dangerous, sick man who molested children, preached violence, and led his followers into a horrible suicide.

David Koresh was not a peaceful cleric in an ivy-covered chapel or even an eccentric with strange religious views. David Koresh was an armed fanatic who was excommunicated in his hometown newspaper in a series they entitled the "Sinful Messiah".

David Koresh sexually abused children and called it holy.

David Koresh was obsessed with guns because he claimed it was commanded by scripture. He hoarded a military arsenal that included at least 48 illegal machine-guns and scores of illegal handgrenades.

David Koresh said "If you want to die for God, you've got to kill for God." He warned that he would meet law enforcement with so much violence that it would make the Los Angeles riots "pale by comparison."

If we forget these facts, we will do a disservice to the ATF agents who lost their lives and we will give credence to those who believe that the big problem at Waco was law enforcement not David Koresh.

Remember, David Koresh and his followers did not greet federal law enforcement officers with psalm or scripture.

They greeted them with these.

They greeted them with machineguns and grenades.

More firepower than even the ATF agents themselves had.

Nothing excuses that ambush.

Nothing in American law excuses that. Nothing in the Bible excuses that.

You do not meet a warrant with a machinegun—even if you believed it was illegally obtained.

Let us not forget that four officers were murdered in that cold-blooded ambush. Twenty others were wounded.

These were our agents, seeking to enforce laws that we passed, that they were sworn to uphold, and that apply to all Americans.

Who speaks for them today? Who speaks for their widows, whose grief we now reopen?

And let us put aside double standards.

The question is asked, why did the ATF have to act when it did? Why could it not have been delayed?

These are valid questions.

But I strongly doubt that the most vocal critics on this panel would argue for delay if ATF discovered an arsenal of machineguns and handgrenades mere blocks from here in Washington's inner city. I doubt that today's Monday morning quarterbacks would demand that ATF wait for the advice of sociologists, social workers, neighborhood preachers, and professors of religion before raiding such an arsenal.

In fact, they would condemn those that advocated delay.

We should have no hypocrisy, no double standards in our judgements.

Yet, some who sit here today seem to hold the ATF and FBI to a standard that no police department anywhere in this country could meet. Some of those who are running these hearings seem to have an ulterior motive.

From the beginning these hearings have had the odor of bias hanging over them. And over the last week, we've discovered where that smell is coming from—the National Rifle Association.

We have uncovered covert payments by the NRA to high-priced explosive experts; lawyers associated with the NRA being sneaked onto panels; and finally a witness who was deceived by NRA employees passing themselves off as Congressional staffers.

But it is no wonder that the NRA has tried to hide their role in this hearing. Everyone knows their bias.

This is an organization that buys advertisements calling law enforcement "jack-booted government thugs."

This is the same organization that just sent out a brand new mailing which said that the Branch Davidians are not the guilty party but that "the people who should be on trial should be the ones who planned and executed the raid."

Frankly, I don't think that NRA gives a damn about the tragedy at Waco but rather wants to destroy the ATF because they enforce laws that the NRA despises—the Brady Law and the assault weapons ban.

I am very troubled that some on the Majority staff have ceded at least part of the planning and organization of this hearing to the NRA.

In order to fully understand what happened at Waco and what went wrong there, we need a fair, impartial, unbiased and factual investigation.

Unfortunately, I cannot today say that this hearing is living up to that standard.

To remove this taint, this black cloud that now hangs over these hearings, and to prove to the American people that this investigation will be fair, we have asked that there be a full investigation into the role of the NRA, including questioning under oath employees of the organization and staff members involved in this hearing.

So far our requests have been denied.

Some of you may ask, who cares whether or not the NRA is involved?

Well it matters because their hatred of the ATF so distorts their view of the incident at Waco that this hearing runs the danger of missing the broader point.

One man bears the ultimate burden for this horrible scar on American history.

That man is David Koresh—the Sinful Messiah.

David Koresh is ultimately to blame for the horror of Waco, no matter how others seek to twist and revise history.

David Koresh ultimately bears responsibility for this tragedy.

These hearings must not run away from that fact. They must examine where law enforcement failed and seek to improve, not decimate, the ATF and the FBI.

When we run into the next David Koresh, we want smarter law enforcement to avoid the mistakes of Waco and stronger and more effective law enforcement to apprehend and punish those who molest children and stockpile weapons.

Thank you, Mr. Chairman.

Mr. ZELIFF. Thank you. In the interests of fairness and openness, I let you have a little additional time, 3 or 4 minutes.

Mr. SCHUMER. I appreciate it.

Mr. ZELIFF. I just want to be on the record with that.

The Chair now recognizes the chairman of the full Judiciary Committee, my good friend, Henry Hyde of Illinois, for his opening statement.

Mr. HYDE. Thank you, Mr. Chairman.

It seems from my good friend Mr. Schumer's remarks that somehow these hearings could be much more abbreviated. The gentleman has a lot of answers that I don't think were available to everybody else. In any event, these will be interesting hearings.

As chairman of the House Judiciary Committee, I shared in the authorization of them because I think they are necessary and I think they are warranted. More than 2 years after the tragedy of Waco, millions of Americans continue to wonder why. Many of my constituents are asking an almost universal question: How could this happen? This episode in our history raises many difficult and lingering questions about timing, judgment, motives, and the proper exercise of Federal police power.

Some believe the approach taken at Waco first by the ATF and then by the FBI was unnecessarily confrontational. Did the actions and activities of the Branch Davidians and their leader David

Koresh justify the lengthy, costly standoff at their compound? Still others have raised questions about what appears to be the increased militarization of Federal law enforcement itself.

The tragedy of 4 dead ATF agents on February 28, 1993, and the death of 86 civilians—whose names have not been read here today—inside the compound on April 19, does raise questions about the bureaucratic structure of Federal law enforcement.

We have the FBI and the ATF. We have the DEA, the Secret Service, Customs, the U.S. Marshal Service, and the INS border patrol. Each of these entities carries out basic law enforcement and investigative functions. Is the authority too dispersed and too scattered among too many Federal agencies? Does this fragmented authority with the accompanying overlap and duplication undermine the quality of the decisionmaking itself?

As a member of this committee, the House Judiciary Committee in the last Congress, I participated in our only hearing on these events. That hearing took place April 28, 1993, I think too close to the events to allow for a balanced perspective. But even at that time, I felt one day of congressional hearings was hardly enough. Few documents were available to be reviewed by members of the committee and many relevant sources were not interviewed or asked to testify.

Subsequently, the two agencies conducted their own internal investigation of themselves. The American people have asked for and demanded more. There is a sense of national discomfort about what happened at Waco, and Congress is the appropriate forum to respond to these legitimate questions and concerns.

Now, congressional investigations have at least one thing in common with baseball. You don't get very far if you don't keep your eye on the ball. There has been a concerted effort by some to divert attention away from the events at Waco, away from the question of what happened, why did it happen, where blame, if any, should be allocated, and what lessons should be learned and how we can prevent this from happening again.

It will be our effort to focus on the essential facts in a bipartisan way so charges of political motivation, while inevitable, will be discounted by fair-minded people. The minority Democrats have been accorded great latitude in helping prepare the list of witnesses. And, I am confident these hearings will answer most, if not all, of the outstanding questions regarding this tragedy.

Most importantly, I hope these hearings will help restore the confidence of the American people in the professionalism and judgment of Federal law enforcement officials and officers. There is no tougher job in America than that undertaken every day by our law enforcement personnel. On the other hand, when government is accused of abusing its great power, citizens are entitled to look to Congress for redress and that is why we are here today. No function of government is above criticism or beyond scrutiny.

The Judiciary Committee has legislative, as well as oversight, jurisdiction over the Department of Justice, the FBI and the ATF. There are lessons to be learned from Waco and those lessons will be applied as the Judiciary Committee considers relevant legislation affecting these agencies in the future.

Thank you, Mr. Chairman.

Mr. ZELIFF. Thank you, Chairman Hyde.

The Chair now recognizes the chairman of the full Oversight Committee, my good friend, Bill Clinger of Pennsylvania, for his opening statement.

Mr. CLINGER. Thank you, Mr. Chairman.

Let me begin my statement by addressing what appears to be an obvious truth. And that is, Vernon Wayne Howell, also known as David Koresh, was criminally reckless at the very least and likely indictable for murder had he lived. No matter what mistakes Federal law enforcement authorities made, and there were many, Koresh broke the law by collecting a cache of illegal weapons, he broke the law violently opposing the service of a search warrant, and he broke the law by allowing the siege to continue for so many weeks.

Worse still, Koresh broke the law of morality by refusing to allow otherwise innocent women and children to leave the Branch Davidian compound thus resulting in their violent and horrible deaths. After the search warrants were served, Vernon Wayne Howell could have taken steps to end the siege and save the lives of his followers. He did not do so. These hearings should not distract the Nation's attention from who bears the ultimate and principal responsibility for what occurred in Mount Carmel, TX, in 1993. It was David Koresh.

As my colleagues will attest in their opening statements, and have attested to, these hearings have several objectives. I agree with those who suggest that a principal objective of these hearings must be to try to answer lingering questions regarding these tragic events, and to restore the level of respect which the Federal law enforcement community must have in order to be effective. If the Members of this body are openminded in the pursuit of truth, and if the witnesses we call are honest and complete in the facts they present, I have little doubt these goals will be met.

I must say I disagree with those, some in Congress, the administration and the media who have argued that these hearings are unnecessary. They contend that the detailed reports prepared by the agencies involved and the volumes of evidence presented in the criminal trials leave few issues unresolved. And I contend that any time Federal law enforcement officers are murdered and any time innocent women and children are killed in the course of government action, extensive congressional oversight clearly is definitely in order.

Just Monday, Alan Stone, who was a member of the Justice Department Waco Report Review Team, wrote in Monday's New York Times that he found the "Government's investigation seriously deficient." Mr. Stone added that the Government never gave the review team, "a candid account of what went wrong." Comments such as these are quite an indictment of the process that has brought us to this point.

I also must say, I am disappointed with those who have characterized these hearings as a front for the NRA or the militia movement. This is, I think, little more than an attempt to shift the Nation's attention away from the actual focus of the hearings, which is to find the truth. Some have requested hearings on the militia movement or the involvement of the NRA, and I would certainly

seriously consider that request. But today, other questions, no less serious, must be asked and those questions have been outlined by the previous speaker.

I have one additional goal for these hearings. The Government Reform and Oversight Committee, which I chair, has been charged with the responsibilities of ferreting out redundancy and inefficiencies in the Federal Government. That includes downsizing Government departments and agencies where appropriate.

Perhaps the members of this joint subcommittee should ask themselves whether Federal law enforcement functions should be consolidated. Not downsized, necessarily, but consolidated. Early National Performance Review recommendations called for the consolidation of some law enforcement activities. Unfortunately, these ideas were not considered seriously. Hearings on Waco alone will not answer questions about consolidation, but maybe they will raise them anew because every day it seems we open the newspaper to find unflattering news about Federal law enforcement officials and their activities.

I know the vast majority of our Federal law enforcement personnel are hard-working, dedicated public servants who put their lives on the line every day. I know the distinguished service of those individuals seldom makes it into the headlines.

As these hearings and subsequent hearings on events at Ruby Ridge and the scandalous Annual ATF Roundup unfold, my appreciation of dedicated service of the vast majority of Federal law enforcement officials will remain undiminished. However, I strongly believe we must uncover the truth about these unfortunate events, find inefficiencies where they exist, and restore faith in the Federal law enforcement community.

I want to commend Chairmen Zeliff and McCollum for the hard work they and their staffs have put into preparing these hearings. I know this has not been an easy process. These will not be easy hearings and they will not be comfortable hearings. But in the end, I believe they will put to rest some of the lingering suspicions and doubts that Americans have had in the advent of these tragic events.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Clinger follows:]

PREPARED STATEMENT OF HON. WILLIAM F. CLINGER, JR., A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF PENNSYLVANIA  
CHAIRMAN, COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Let me begin my statement by addressing what appears to be an obvious truth. Vernon Wayne Howell, also known as David Koresh, was criminally reckless at the very least and likely indictable for murder had he lived. No matter what mistakes Federal law enforcement authorities may have made, Koresh broke the law by collecting a cache of illegal weapons, broke the law by violently opposing the service of a search warrant, and broke the law by allowing the siege to continue for so many weeks.

Worse still, Koresh broke the law of morality by refusing to allow otherwise innocent women and children to leave the Branch Davidian compound, thus resulting in their violent and horrible deaths. Vernon Wayne Howell could have taken steps to end the siege and save the lives of his followers. He did not do so. These hearings should not distract the nation's attention from who bears the ultimate and principle responsibility for what occurred in Mt. Carmel, Texas in 1993. It was David Koresh!

As my colleagues will attest in their opening statements, these hearings have several objectives. I agree with those who suggest that a principal objective of these hearings must be to try to answer lingering questions regarding these tragic events and to restore the level of respect to which the federal law enforcement community is entitled. If the members of this body are open minded in the pursuit of the truth, and if the witnesses we call are honest and complete in the facts they present, I have little doubt these goals will be met.

I disagree with those in Congress, the Clinton Administration, and the media who have argued these hearings are unnecessary. They contend that the detailed reports prepared by the agencies involved and the volumes of evidence presented in the criminal trials leave few issues unresolved. I contend that any time Federal law enforcement officers are murdered and any time innocent women and children are



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killed in the course of government action, extensive congressional oversight clearly is in order. Beyond that, however, I have a quote from the jury foreman of the criminal trial who said that she felt the trial was neither fair nor impartial.

Further, Alan Stone, a member of the Justice Department Waco Report Review Team, wrote in Monday's New York Times that he found the "Government's investigation seriously deficient." Mr. Stone added that the government never gave the Review Team "a candid account of what went wrong." Comments such as these are quite an indictment of the process that has brought us to this point.

Even former Democrat Chairman Jack Brooks seemed to suggest that future hearings would be necessary. At the end of his hearings on this topic, on April 28, 1993, Chairman Brooks stated, "this committee will diligently follow up the progress of the executive branch investigation, take whatever steps it deems necessary, and bring all the facts to light to the American public as expeditiously as possible." That is what we are doing today.

I am also disappointed with those who have characterized these hearings as a front for the NRA or for the militia movement. This is little more than an obvious attempt to shift the nation's attention away from the actual focus of the hearings, which is to find the truth. Some have requested hearings on the militia movement. I will seriously consider that request. But today, other questions, no less serious, must be asked.

Why were such violent means selected to serve the original search warrant? Were other, less risky, forms of service available? Were Federal laws violated by the involvement of Department of Defense personnel and equipment in this domestic law enforcement function? Why was deadly CS Gas chosen as a means to end the standoff? Who made the final decision to end the siege on day 51? Was any evidence lost or destroyed by Federal authorities seeking to cover up decisions that may have led to the deaths of many innocent Americans? The American people have asked those questions and those are the questions these hearings will address.

I have one additional goal for these hearings. The Government Reform and Oversight Committee, which I chair, has been charged with the responsibility of ferreting out redundancy and inefficiencies in the Federal government. That includes downsizing government departments and agencies where appropriate. With that goal in mind, my committee will hold field hearings around the country to address the support and concern Americans concerning downsizing the government and to take testimony from local government leaders and corporate executives on how to do the job right. The first of these hearings was held last week in Cleveland, Ohio and others are being planned.

Perhaps the members of this joint subcommittee should ask themselves whether federal law enforcement functions should be consolidated. Not downsized, necessarily, but consolidated. Early National Performance Review recommendations called for the consolidation of some law enforcement activities. Unfortunately, those

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ideas were not considered seriously. Hearings on Waco alone will not answer questions about consolidation, but maybe they will raise them anew.

Every day it seems we open the newspaper to find unflattering news about federal law enforcement officials and their activities. I know the vast majority of our Federal law enforcement personnel are hard working, dedicated public servants who put their lives on the line every day. I know the distinguished service of those individuals seldom makes it into the headlines.

As these hearings and subsequent hearings on events at Ruby Ridge and the scandalous "Annual ATF Roundup" unfold, my appreciation of the dedicated service of the vast majority of Federal law enforcement officials will remain undiminished. However, I strongly believe we must uncover the truth about these unfortunate events, find inefficiencies where they exist and restore faith in the Federal law enforcement community.

I commend Chairmen Zelff and McCollum for the hard work they and their staffs have put into preparing these hearings. I know this has not been an easy process. These will not be easy hearings. But in the end, I believe they will put to rest some of the lingering suspensions and doubts Americans have had in the aftermath of these tragic events.

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Mr. ZELIFF. Thank you, Mr. Chairman.

The Chair now recognizes the ranking minority member of the Judiciary Committee, my good friend, John Conyers of Michigan. I might add that 2 years ago reading the transcripts, you were involved in the Judiciary hearing, I believe a week after Waco took place, and I look forward to your comments and your opening statement.

Mr. CONYERS. Thank you and good morning. I want to begin by emphasizing my deep commitment to what is going to be the most important, to me, to come out of these hearings and that is how we can reform law enforcement to make it a better tool in all of the agencies.

And if that doesn't happen, then I will have to tell you in advance that as we prepared for these hearings, I have come across absolutely no new evidence that requires 8 days' worth of hearings. I want to emphasize my deep commitment to law enforcement reform and I have talked with the Secretary of the Treasury about the investigation of the Waco raid that underscores the need for reform to restrain abuse.

And the most emblematic of these problems is the race relations that infest all of law enforcement, all of the agencies. I have been working on Judiciary for 30 years. And we are finally now beginning to get to the terrible oppression and discrimination that still goes on and within the Bureau of Alcohol, Tobacco and Firearms. They had the nerve to again hold this disgraceful Tennessee Ol' Boys Roundup which is a symptom of the kind of problems that we have.

Now, of course we can abolish that roundup every year, but the circumstances and the environment that creates it won't change unless the leaders here and in the Congress and in this administration do what I believe they have committed to me that they will do is to change that. That is the kind of reform that leads to better law enforcement.

Now, the question still legitimately lingers whether there is some other motive for these hearings. We will have to listen to conspiracy theories of every stripe, but I don't think we will hear any new facts to contradict the findings that have been brought forward already. And the reform on the agenda here today that I am most worried about is the collateral attack on assault weapons. That is the agenda that I am very disturbed about.

And so no one need look around and act like they are surprised to hear that that was the first thing this new majority was coming at in this session of Congress. Oklahoma City stopped that, and now all of a sudden I am finding friends who are worried about law enforcement and racial discrimination and disparities that have never said a word before all the years that I have been working on this.

And so I don't want to give any extra credibility to anything that may come out of these hearings. Mr. Zeliff referred to I was the only member of Judiciary who severely criticized this raid when we held a hearing in 1993. And I think that gives me cause and further legitimacy to have great reservations about the purpose of these hearings.

This isn't just for the American people; it is about how some forces within our Government and Nation and the National Rifle Association attempt to repeal the assault weapons ban by tearing down the agencies that enforce the ban. And that is not to say that the events surrounding the raid and the agencies conducting the raid are without legitimate criticism. But let's be clear about that because I have already stated my criticisms and I don't change them.

But I am also astounded by the fact that like Americans in this country by a margin of 3 to 1, we believe that the hearings on the militia and the Klan and the Skinheads and the Aryan nation are the ones that deserve the hearings before Congress, not the law enforcement agencies and Waco which has had, as most people know, many hearings, more than four complete hearings.

And so as the only member of this committee who in the aftermath of the raid dare to publicly criticize it, I will tell you now, if there was an issue that I believe that needed more scrutiny, I would be the first to call for a hearing but, in my preparation for this hearing, I found nothing new.

Now, I welcome all the new friends that we have to this subject and to these kinds of problems. But let's remember this: Before previous support for the raid was—before the assault weapons ban gave Federal law enforcement the power to make our streets safer by prohibiting assault weapons and because in the wake of Oklahoma City, this new majority I hope will find the courage to keep assault weapon bans in the law and attempt—do not attempt a de facto repeal by going after Federal law enforcement agencies.

And with that, Mr. Chairman, I thank you for the time and look forward to this process that brings us here today.

Mr. ZELIFF. Thank you.

The Chair now recognizes the ranking minority member of the full committee, our friend, Cardiss Collins of Illinois, for her opening statement.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman.

During my 22 years of service on this committee, I have always been a strong supporter of vigorous oversight by Congress over the activities of the executive branch. These hearings are being portrayed as an effort to hold fair, open, and unbiased hearings on the raid at the Branch Davidian compound at Waco and, therefore, I should have few reservations about these hearings.

Many observers have noted that despite many hearings and reports on this subject over the past 2 years, further hearings can only shed more light on the raid, and perhaps resolve unanswered questions. Taken at face value, this logic is hard to contradict.

I certainly have never been adverse to criticizing Federal, State, or local law enforcement when I believe that they had overstepped their bounds. I know all too well how law enforcement officials can abuse their authority. That is one of the reasons why several months ago I vigorously opposed the efforts of the Republican majority to weaken constitutional requirements for search warrants as part of the Contract With America.

Moreover, I am totally outraged by the recent revelations of Federal law enforcement agents participating in a disgustingly racist outing known as the Good Ol' Boys Roundup. Therefore, I imme-

diately wrote to President Clinton to express my outrage and to demand a thorough investigation and swift action, which has now been promised.

These hearings also do not suggest any outward partisan biases. The plans for the ATF raid on Waco began in the Bush administration and continued in the Clinton administration. To the extent that errors and abuses occurred, they were bipartisan in nature. Similarly, the Ruby Ridge siege, which is getting new attention, occurred during the Bush administration. My colleagues on the other side of the aisle would be well advised to seek the facts and not attempt to turn these hearings to partisan advantage.

Nevertheless, I continue to have serious concerns about these hearings and I would like to share with you my reasons.

First, I cannot help but conclude that the recent bombing in Oklahoma City has caused this rush to 8 days of hearings on Waco. The only reference in our committee's oversight plan is a vague statement about a review of ATF activities to occur at the end of this year. The word Waco never appears, and we had no indication of 8 days of hearings until very recently.

The fact that we are holding extensive hearings on Waco just weeks after the bombing in Oklahoma City, by a suspect who reportedly was upset by government action at Waco, can only send the wrong signal to disturbed individuals, who believe that bombs will bring attention to their grievances.

Second, I am troubled because I believe that these hearings are not so unbiased as we are being told, and may have been hopelessly tainted by the involvement of the National Rifle Association. Our first indication of the relationship of the committee Republicans and the NRA on these hearings occurred when the Republicans sought to use a company known as Failure Analysis Associates to examine weapons recovered at Waco. Later we learned that Failure Analysis Associates had been retained by the NRA.

More startling was a recent revelation that individuals calling themselves the Waco Hearings Team were contacting committee witnesses. This team was not employed by our Government Reform and Oversight Committee, but instead was employed by the NRA. At this stage, we have no idea to what degree the NRA Hearings Team was working with the Republican committee staff. However, this is an unprecedented case of an outside advocacy group using congressional hearings to further their own agenda and at the same time potentially tampering with congressional witnesses.

I have called upon the chairman of our committee to immediately take action to remove the stain of this outside involvement. As an important first step, members of the Waco Hearings Team must be called before the Government Reform and Oversight Committee to explain under oath their involvement in the hearings by subpoena if necessary. To further wipe the slate clean, the chairman should also disclose all contacts staff has had with these individuals.

Third, I am concerned that some Members, the true—that for some members, the true agenda is not to find the truth about Waco, but instead it appears to be an effort to protect the Nation's gun laws and, more important, to divert attention from one of the real issues raised by the Oklahoma bombing—namely the rise of militias and their preliminary indications. The American people

have expressed a 3-to-1 preference, as we have already heard, for hearings on militias, not Waco, and I have also requested militia hearings from the chairman of the Government Reform and Oversight Committee.

Fourth, I am forced to note the odd set of priorities of the Government Reform and Oversight Committee in the past 6 months. When this committee considered five items in the Contract With America, we held a total of just five hearings. On one bill, the unfunded mandates, we held no hearings. Yet now members are being asked to deal with at least 8 days of hearings on Waco. We have plenty of time to rehash Waco, but where are the hearings on matters America cares about, such as our health care system and putting people to work.

At the end of these hearings, there will undoubtedly be some positive outcomes. Perhaps members on the other side of the aisle will begin to recognize some of the concerns I have had over the past decade in the increased involvement of the military in domestic law enforcement. Maybe they will also reconsider their efforts to weaken standards for search warrants. Perhaps we can learn additional lessons that will avoid another Waco.

However, I am concerned that our Republican colleagues' new interest in constitutional protections, such as the fourth amendment's protections against search and seizure, has made them feel obligated to reinvent the facts of this case. A number of our witnesses are being called to place David Koresh in a brighter light.

The facts remain that Koresh had amassed an arsenal of illegal weapons, that there were serious cases of child abuse, including sex with minors, that Koresh and his followers fired upon Federal agents seeking to serve a search warrant, killing four agents, and that Koresh ordered the fires that led to the deaths of his followers, including women and children.

We will undoubtedly learn of significant efforts made by Government officials, and we all know that two wrongs don't make a right. However, we must never forget the context of this tragedy.

I would remind my colleagues that those who wish to protect civil liberties must be willing to recognize that those protections apply to the guilty as well as to the innocent. They apply to all citizens of this country, not just gun owners. It is a mistake for those who feel the necessity to try to prove that David Koresh was innocent of serious crimes to justify their newly found interest in civil liberties.

So finally, as we begin some of the most controversial hearings that the Government Reform and Oversight Committee has ever conducted, I urge the chairman to take immediate steps to rehabilitate the long-established honor of our committee by coming clean on the involvement of the NRA in this hearing. Anything less will leave as many doubts in the minds of Americans as they had before these hearings began.

I thank you, Mr. Chairman, for your extension of time and yield back the balance of the time.

[The prepared statement of Mrs. Collins follows:]

PREPARED STATEMENT OF HON. CARDISS COLLINS, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF ILLINOIS

Thank you, Messrs. Chairmen. During my 22 years of service on this committee, I have always been a strong supporter of vigorous oversight by Congress over the activities of the Executive Branch. These hearings are being portrayed as an effort to hold fair, open, and unbiased hearings on the raid at the Branch Davidian compound at Waco, and therefore I should have few reservations about these hearings.

Many observers have noted that despite many hearings and reports on the subject over the past two years, further hearings can only shed more light on the raid, and perhaps resolve unanswered questions. Taken at face value, this logic is hard to contradict.

I certainly have never been averse to criticizing Federal, State, or local law enforcement when I believed that they had overstepped their bounds. I know all too well how law enforcement officials can abuse their authority. That is one of the reasons why several months ago I vigorously opposed the efforts of your party to weaken constitutional requirements for search warrants as part of your Contract with America.

Moreover, I am outraged by the recent revelations of Federal law enforcement agents participating in a disgustingly racist outing known as the "Good Ol' Boys Roundup." I immediately wrote to President Clinton to express my outrage and to demand a thorough investigation and swift action, which has now been promised.

These hearings also do not suggest any outward partisan biases. The plans for the ATF raid on Waco began in the Bush Administration and continued in the Clinton Administration. To the extent that errors and abuses occurred, they were bipartisan in nature. Similarly, the Ruby Ridge siege, which is gaining new attention, occurred during the Bush Administration. My colleagues on the other side of the aisle would be well advised to seek the facts and not attempt to turn these hearings to partisan advantage.

Nevertheless, I continue to have serious concerns about these hearings, and I would like to share with you my reasons.

First, I cannot help but conclude that the recent bombing in Oklahoma City has caused this rush to eight days of hearings on Waco. The only reference in our committee's oversight plan is a vague statement about a review of ATF activities to occur at the end of this year. The word Waco never appears, and we had no indication of eight days of hearings until recently. The fact that we are holding extensive hearings on Waco just weeks after the bombing in Oklahoma City, by a suspect who reportedly was upset by government action at Waco, can only send the wrong signal to disturbed individuals, who believe that bombs will bring attention to their grievances.

Second, I am troubled because I believe that these hearings are not so unbiased as we are being told, and they may have been hopelessly tainted by the involvement of the National Rifle Association. Our first indication of the relationship of the Committee Republicans and the NRA on these hearings occurred when the Republicans sought to use a company known as Failure Analysis Associates to examine weapons recovered at Waco. Later we learned that Failure Analysis Associates had been retained by the NRA.

More startling was the recent revelation that individuals calling themselves the Waco Hearings Team were contacting Committee witnesses. This Team was not employed by our Committee, but instead was employed by the NRA. At this stage we have no idea to what degree the NRA Hearings Team was working with the Republican committee staff. However, this is an unprecedented case of an outside advocacy group using Congressional hearings to further their own agenda and at the same time potentially tampering with Congressional witnesses.

I have called upon the Chairman to immediately take action to remove the stain of this outside involvement. As an important first step, members of the Waco Hearings Team must be called before the committee to explain under oath their involvement in the hearings, by subpoena if necessary. To further wipe the slate clean, the Chairman should also disclose all contacts staff has had with these individuals.

Third, I am concerned that for some Members, the true agenda is not to find the truth about Waco, but instead appears to be an effort to attach the nation's gun laws, and more important, to divert attention from one of the real issues raised at the Oklahoma City bombing—namely, the rise of militias and their implications. The American people have expressed a three to one preference for hearings on militias, not Waco, and I have also requested militia hearings from the Chairman.

Fourth, I am forced to note the odd set of priorities in this committee in the past six months. When this Committee considered five items in the Contract with Amer-

ica, we held a total of just five hearings. On one bill, the Unfunded Mandates bill, we held no hearing. Yet now Members are being asked to deal with at least eight days of hearings on Waco. We have plenty of time to rehash Waco, but where are the hearings on matters Americans care about, such as our health care system and putting people to work.

At the end of these hearings, there will undoubtedly be some positive outcomes. Perhaps Members on the other side of the aisle will begin to recognize some of the concerns I have had over the past decade in the increased involvement of the military in domestic law enforcement. Maybe they will also reconsider their efforts to weaken standards for search warrants. Perhaps we can learn additional lessons that will avoid another Waco.

However, I am concerned that our Republican colleagues' new interest in constitutional protections, such as the Fourth Amendment's protections from search and seizure, has made them feel obligated to reinvent the facts of this case. A number of the witnesses are being called to place David Koresh in a brighter light.

The facts remain that Koresh had amassed an arsenal of illegal weapons, that there were serious cases of child abuse, including sex with minors, that Koresh and his followers fired upon Federal agents seeking to serve a search warrant, killing four agents, and that Koresh ordered the fires that led to the deaths of this followers, including women and children.

We will undoubtedly learn of significant errors made by government officials, and we all know that two wrongs don't make a right. However, we must never forget the context of this tragedy.

I would remind my colleagues that those who wish to protect civil liberties must be willing to recognize that those protections apply to the guilty as well as the innocent. They apply to all citizens of this country, not just gun owners. It is mistake for those who feel the necessity to try to prove that David Koresh was innocent of serious crimes to justify their newly found interest in civil liberties.

As we begin some of the most controversial hearings this committee has ever conducted, I urge the Chairman to take immediate steps to rehabilitate the long established honor of this committee by coming clean on the involvement of the NRA in this hearing. Anything less will leave as many doubts in the minds of Americans as they had before these hearings.

Mr. LANTOS. Mr. Chairman, may I be permitted to ask a question?

Mr. ZELIFF. Yes, you can ask a question.

Mr. LANTOS. Thank you, Mr. Chairman.

Mr. Chairman, as you know, in the previous Congress as chairman of another subcommittee, I held 27 hearings on the HUD scandal. As we begin this series of hearings, I think every member of this committee is profoundly concerned that the cloud which hangs over the opening of this hearing be dispelled.

I read very carefully your opening statement, Mr. Chairman. And there is no reference in your opening statement to the involvement of the National Rifle Association in the preparations for this hearing. Several of my colleagues have raised the issue.

I have before me a letter from my good friend, the distinguished chairman of the Judiciary Committee, Mr. Hyde, which says, in part, "I share your outrage over an apparent attempt by an outside party to mislead a Texas social worker by identifying herself as a member of the Waco Hearings Team." This letter was addressed to Mr. Conyers.

Since the media reports clearly indicate that it was members of your staff who involved in a surreptitious and sinister way the NRA in the preparation of these hearings, I believe members of this committee and the American public are entitled to your response to these charges.

Mr. BARR. I have a parliamentary inquiry.

Mr. LANTOS. I am in the middle of a sentence if my colleague will grant me the courtesy.



Mr. Chairman, I think the integrity of these hearings demand, and the American people are entitled, to your response to this basic question. We need to begin these hearings with this cloud removed.

I believe you are a man of integrity. I believe that you did not know of the surreptitious involvement of the NRA, but I also believe, on the basis of preparing myself for this hearing, that members of your staff were directly responsible for the surreptitious and sinister involvement of the NRA in the preparation for these hearings.

I think you should have an opportunity to tell the American people what the facts are concerning the NRA, members of your staff, and preparations for this hearing.

Thank you, Mr. Chairman.

Mr. ZELIFF. Question?

Mr. BARR. The gentleman may not think parliamentary inquiries are important, but I believe they are.

Mr. LANTOS. I do, too. I do too think they are important.

Mr. BARR. Thank you for clarifying that.

Mr. Chairman, we were provided prior to the hearing, both in oral communications from the staffs as well as written communications here, certain procedures we would be following. And at this point, I would appreciate if the chairman could perhaps summarize those because I wasn't aware of the fact that there would be opportunity for questions that are apparently unrelated to the scope of these hearings as we have been led to believe and that are outside the scope of the hearing procedures we were given.

Could the chairman basically summarize what our procedures are going to be?

Mr. ZELIFF. We are going to move forward. We have discussed much of this in the past few days. I think the key thing here is that not only myself but I think all of us are going to be held accountable for our results after these 8 days. And our commitment to everybody, including the American people, is to give a full, open process so we can get at the truth at Waco. All other issues, in my judgment, can be solved or talked about on a different day.

I think the key thing here is we will be held accountable for our results. I think we would like to move forward.

Ms. JACKSON LEE. Mr. Chairman, a parliamentary inquiry.

Mr. ZELIFF. What is your parliamentary inquiry?

Ms. JACKSON LEE. I am here, Mr. Chairman. My inquiry then follows on Mr. Barr's question whether or not you would reconsider—and I appreciate the comments you just made, whether you would reconsider rules that disallow full questioning by all members of these two committees.

Mr. Lantos just asked a question. Mr. Barr asked you to recite the parliamentary procedures. I would ask that you reconsider because you are disallowing the full hearing—because you are disallowing members of this committee from asking questions and I am wondering—

Mr. ZELIFF. I think, by prior agreement, we have a process here that was agreed upon both by the majority and the minority. And that will give everyone an opportunity to give questions at the appropriate time.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

I raise an objection.

Mr. LANTOS. Mr. Chairman, would you mind answering the question I posed to you?

Mr. ZELIFF. OK. We are going to move on.

The chairman and the ranking members of the two subcommittees have reached an agreement about the procedure for questioning the witnesses during these hearings which is contained in the document labeled The Hearing Procedures which all members have before them.

Without objection, these procedures will be utilized for these hearings.

Mr. CONYERS. Reserving the right to object. Mr. Zeliff, reserving the right to object.

Mr. ZELIFF. OK.

Mr. CONYERS. May I reach an agreement that this reservation will be sought every day in this proceeding, so that we may agree upon this procedure on a daily basis? With that agreement, I would be willing to withdraw my reservation.

Mr. BARR. Reserving the right to object.

Mr. CONYERS. Well, I would like to—

Mr. MCCOLLUM. Would you yield to me, Mr. Conyers, as the chairman on the other committee?

Mr. CONYERS. Certainly, I would be delighted.

Mr. MCCOLLUM. I realize you wish to have that reservation every day. But, as you know, the reason why the hearings are being conducted by the agreement that we discussed, you and I and the two full chairmen of the full committees and the ranking members on the subcommittees, is that we could not get through the hearings in 8 or 9 days with nearly a hundred witnesses if we did it by other ground rules. I understand that you may have some apprehension about this, some of the Members do, but I think they need an explanation.

I'm using your reservation to do that. I think you would concur that what we are about to do, if you're going to agree to it, as I think you will, is move through at least today and I would hope each day, because we couldn't do it otherwise, with 15 minutes of questioning by each side, each committee, each Democrat, Republican, for four questioners, and then 5-minute questions back and forth, and then the chairmen and the ranking members get 5 minutes of questioning. We, of course, have the power to designate who does it. If we did it by the regular 5-minute rule, if the gentleman will continue to yield, we just couldn't conduct these hearings the way we want to.

Mr. CONYERS. Yes, reclaiming my time, all I'm pointing out to the gentleman is that I'm in agreement with that procedure. All I want is that this unanimous consent be renewed every day of the 8-day hearing.

Mr. ZELIFF. I don't have any problem here. I guess what we really tried to do here, instead of making this a 51-day siege within our own process here, we tried to limit it to 8 days. If it doesn't work out, we'll go back to five minutes according to the rules; we will be happy to accede to that request.

Mr. CONYERS. With that agreement, I will withdraw my objection.

Mr. WATT. Reserving the right to object.

Mr. ZELIFF. Mr. Watt.

Mr. WATT. I thank you, Mr. Chairman. I may not be as kind on this issue, because I'm not a ranking member or a—one of the people who has been designated to question. It seems to me that a number of the members of this committee have effectively been disenfranchised from participation by the leadership, whether it's the leadership on one side or both sides, and that we just might as well pack up our bags and go home and review the transcript of whatever hearing you all conduct.

We're not going to be given any opportunity to ask questions. We are going to witness a hearing that proceeds as if it were a prosecution, with one side being the prosecutor and the other side being the defender, as I understand the process, rather than starting from a neutral position on the part of all of the members of this committee as we typically do in hearings where we're gathering information and come to a hearing with an obligation to the American people to come without biases and to gather information for the benefit of the American public.

I hear you say that the rationale for this is expediency and saving time, but I'm not sure what the pressure is to get through this set of hearings. If they are important hearings to the American people, then it seems to me we ought to be taking sufficient amount of time to give the Members of Congress the opportunity to participate in the process. And so I wish somebody, on my reservation of right, would explain to me the rationale for how we are proceeding. Otherwise, I would more than reserve, I would actually object.

Mr. ZELIFF. Let me—and I understand your concerns.

What we tried to do may be a little bit unusual, but I think we tried to be very fair—maybe went too far. We tried to split the questioning, a half-hour for the Democrats, minority, and a half-hour for the Republicans. And we tried to just do that in a very fair and open process. We took and added some 30 witnesses to the list. So we're really trying very hard to make this thing work.

In the final hearing panel with Ms. Reno, we went back to the 5-minute rule to give everybody a chance to question her.

Mr. WATT. Mr. Chairman, reclaiming my time, I hear the Democrats being represented and the Republicans being represented. What I don't hear being represented in this equation is the American people for whom we profess to be having this hearing.

Mr. MCCOLLUM. Would the gentleman yield?

Mr. WATT. I am happy to yield if somebody can explain to me how we're doing justice to the American people just by giving the leadership the right to question witnesses, rather than each of us having the right to exercise our responsibility to our constituents that we were all sent here equally to do.

Mr. MCCOLLUM. Well, if the gentleman will yield, roughly each round of the panel under the 5-minute rule that we would normally proceed under, for every panel we have down here would take at least 3 hours. And with all of the involvement of what we need to do to get through the process of doing these, you're going to stretch out the hearings, over a period of weeks, not 8 days. We're talking probably at least a solid month of hearings that would be required.

I think both subcommittees feel that it is in the best interest of all the parties concerned to attempt to get through these hearings in a period of roughly 8 days or 10 days or something close to that.

It's strictly a matter of pragmatics. On the one hand, I would hope that your side would have given you a certain amount of time to be designated. I think on at least my Subcommittee on Crime, on the Republican side, every single one of our members participates in 15-minute rounds and 5-minute rounds on, I think, more than one occasion—certainly with the 5-minute rounds; and then on the 2 days we've reserved out of the 8 for the main participants at Treasury and at the Justice Department, for Attorney General Reno and for Mr. Noble, I believe we will be under the 5-minute rule, and every member here will go through the routine questioning.

So we're only talking about a portion of the time just to try to get through all these panels that have multitudes of witnesses, as you know.

Mr. WATT. Mr. Chairman, reclaiming my time, I would just say that I'm not going to object, at least not today, if we're going to redo this every day. But I really do think we are doing a disservice to the American people. And when we justify that disservice in terms of Republican-Democratic politics, I think we do more of a disservice to the American people because we've simply acknowledged that we have politicized this process to the point where it's a political process, which is what I really thought about these hearings in the first place, rather than having any substantive benefit.

And I'll withdraw my reservation and don't be surprised if I just read the transcript, because if I'm not going to be allowed to participate in the hearing, then I just might as well read the transcript and stay at home and do some other things.

Thank you, Mr. Chairman.

Mr. ZELIFF. We appreciate your withdrawing your objection. We hope that it works out so that everybody will be able to participate, and I think that will be the case.

The objection has been heard. The Chair would now—

Mr. TAYLOR. Reserving the right to object, Mr. Chairman.

Mr. ZELIFF. Mr. Taylor.

Mr. TAYLOR. Mr. Chairman, I was particularly appalled—

Mr. ZELIFF. Turn on your mike, please.

Mr. TAYLOR. Mr. Chairman, I was particularly appalled—Mr. Chairman, I was particularly appalled in looking at the list of witnesses at a total lack and a total void when it comes to the events—as Mr. Clinger, the chairman, the full chairman of this committee pointed out, the events leading up to the raid in Waco.

Reminds me of a boy, hearing about the events where Federal soldiers had chased a man literally through the countryside of Virginia and Maryland, interrogated houses, shot up a barn and burnt down the barn that he was in. Sounds like a terrible thing, until you realize that man was John Wilkes Booth, the man who killed President Lincoln.

If we start only with the raid itself and not the events leading up to it, aren't we going through the same void? And aren't we, in turn, depriving those 4 dead ATF agents and the 18 or so who were wounded the same right that the scum criminals of this country get

every time they walk into a courtroom? And that is the right to be presumed innocent until they're proven guilty.

Mr. MCCOLLUM. Would the gentleman yield?

Mr. TAYLOR. Now, my question is, are we going to allow the members of this panel, who have just been cut off from the time they have to interrogate witnesses, at least the right to move that we subpoena additional witnesses so that we know about the events that led up to this, so we know whether or not it happened in a void or that maybe some people were doing the job that the Congress of the United States hired them to do, enforcing the laws that the Congress of the United States wrote?

Mr. ZELIFF. The whole day is going to be committed to the events that led up.

Mr. TAYLOR. Will the members of this panel be allowed to subpoena additional witnesses?

For example, the people who in the local newspaper wrote this series of articles called the Sinful Messiah; will we be allowed, for example, to interview the Branch Davidian who claims he was held captive there for 3 months? Will I be allowed to interview the deputy sheriffs that called the ATF in the first place?

Mr. MCCOLLUM. Will the gentleman yield on that?

Mr. TAYLOR. Sure.

Mr. MCCOLLUM. Let me answer the question and tell you that I did not know, and I don't think Mr. Zeliff knew, that your interest in a particular witness has not been addressed through the minority side. Because in all seriousness—

Mr. TAYLOR. It was brought to Mrs. Thurman's attention yesterday.

Mr. MCCOLLUM. Let me just say this—I am not on your subcommittee, but I just want to make the overall point with you because we're trying to be fair—I think about 85 percent, maybe 90 percent of all the minority requests have been granted. We've expanded the panels, we've done all kinds of things. And I believe we need at least to proceed today.

If there are missing witnesses that are really critical to this that you feel that each day as we go through we are not really addressing, if you, going through Mrs. Thurman, Mr. Zeliff, and your committee, want to bring them up, we'll look at bringing more witnesses in here. Nobody wants to keep us from having the whole story told, least of all me.

Mr. TAYLOR. If I could have that understanding from the other Chairman, I will drop my objection.

Mr. MCCOLLUM. He wants some understanding from you.

Mr. ZELIFF. OK.

Mr. TAYLOR. That understanding is, if there are people that we feel like need to be subpoenaed, who need to have their side of the story told of the events leading up to the raid, that they be subpoenaed and brought before this panel?

Mr. ZELIFF. You know, I assume you agreed to that. If he agrees—

Mr. MCCOLLUM. If you submit the names, we'd like to review them with you. We don't want to just say, carte blanche, anybody.

Mr. ZELIFF. And the bottom line is, we have been open to everybody's suggestions. We now have got 90 witnesses. If we

missed one that you think is really vital, sure, we'll be willing to listen and talk to you about this, just as we have with everybody else.

Mr. TAYLOR. Mr. Chairman, reclaiming my time, I think it is inexcusable that the people who wrote the series of articles that appeared in the local paper around the time of the raid were not subpoenaed. I also think it's inexcusable that the deputy sheriff who initially called the ATF in, which is the purpose of the Federal Government, is to help out the locals when they need it—

Mr. ZELIFF. The sheriff will be in.

Mr. TAYLOR. No, the deputy sheriff, his name is Wiedemeyer, if I am not mistaken.

Mr. ZELIFF. The deputy sheriff is here.

Mr. TAYLOR. I think it's also important that we have the gentleman who claims he was held hostage there for 3 months.

Mr. CONYERS. If the gentleman will yield, could you and your leaders and ours join in with you in a more informal way about the list that you're concerned with?

Mr. TAYLOR. Mr. Conyers, if I can have that agreement from the chairmen, I withdraw my objection.

Mr. CONYERS. Of course. I think the chairman has given it, and I think the other ranking members have joined in with him already.

Mr. ZELIFF. Without objection, so ordered.

Mr. SCHIFF. Mr. Chairman, I observe the right to object on this side to the procedure.

Mr. ZELIFF. Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I will not actually object. I just want to add that certainly these two subcommittees as we proceed should look carefully at adding to the witness list if it's appropriate to do so as we go along and as we take testimony from the witnesses.

I just want to point out that in response to the gentleman from Mississippi's observations, the only Federal charge that was made as a basis for the Alcohol, Tobacco and Firearms department raid mentioned weapons charges. There was no charge of any other kind of criminal violation, so that this is not an investigation of the Branch Davidian group. It is an investigation of the law enforcement procedures that related to that group.

Now, to the extent that any additional witness would contribute to that, I would certainly join with the gentleman from Mississippi, but I would ask the Chair to keep us focused on what the purpose of the hearing is.

With that, I withdraw my reservation and yield back my time.

Ms. JACKSON LEE. Mr. Chairman, I reserve my right to object—Mr. Chairman?

Mr. ZELIFF. Yes.

Ms. JACKSON LEE. Mr. Chairman, I just wanted to follow up on the gentleman, Mr. Taylor's comments about additional witnesses.

I had the opportunity to discuss with one of the spouses, who might be here in the audience, of one of the wounded ATF; and I would like to add to the discussion that we might have—in this combined committee, that there were not enough line officers on the witness list, and add to Mr. Taylor's inquiry about additional

witnesses to get an understanding as to whether or not additional witnesses are added and whether or not we may modify some of the rules that may allow full questioning, whether or not these hearings could go beyond 8 days.

Would you be willing to consider that? Because I really think that that opportunity should be present only to get at the facts and the truth.

Mr. ZELIFF. Both Justice and—both the FBI and ATF were very upset about our request for line officers, and we tried to honor that request. We certainly can discuss it, but we tried very hard to work within their needs and their requests on that particular issue.

Ms. JACKSON LEE. Well, I will respect that, but I think that it's certainly something that we should pursue further within the realm, because I think the information would be helpful for where we're trying to go, which is to correct any errors that might have occurred.

The other point that I'd like to hear from you on is the extension of these hearings beyond the 8 days.

Mr. ZELIFF. We hope it's not necessary. But obviously if it needs to go beyond 8 days, then we're going to have to be flexible and complete our business.

Mr. MCCOLLUM. Will the gentlelady yield on her time?

Ms. JACKSON LEE. I will yield.

Mr. MCCOLLUM. I'm very happy to have the lady on my subcommittee, and we have had a lot of good rapport, and I want to continue that.

Let me make the statement so you understand it—and I hope everybody else does—that the procedures that we are trying to accomplish here today are unusual and unique and different, and they cannot be done under House rules unless we all concur. I don't know how many people realize that. I thought that was what we were working through, through each side of the aisle.

Now obviously we have not done it through our minority sufficiently to prevent all this, but we would have to completely reorganize the scope of these hearings and the order in which they come, maybe even the days they're going to be held on, and maybe even carry these hearings over into September, if we have to call too many witnesses.

I would suggest for everybody's benefit that if we don't have all our heads together, as we don't seem to have here—and I did think we did, and I think Chairman Zeliff did, too, but we don't seem to—that maybe after today's hearings, at the close of the day—let us proceed today the way we are because we have our witnesses here—at some suitable time, maybe if we have a break during the day or maybe at the end of the day, we have a bipartisan caucus, because again this is not something we're doing in any partisan way.

We've tried very, very hard to work out something everybody can agree to in a very democratic process on these two subcommittees—it is almost unheard of to be this democratic in this process.

Ms. JACKSON LEE. Reclaiming my time, let me appreciate the leadership of all of those who participated in attempting to structure these hearings so that we could move forward. I think the key objection in my remarks is not to take away on how difficult it is

to have these hearings and to proceed with the number of witnesses, but in fact to get at the true mission, as I understand these hearings are, to review all of the facts, to ensure that we've heard, if not all, most all of the witnesses, and be able to then secure reasonable responses to the solutions that we all would like to get at.

I hope we will be able to have those discussions, because I think I made it clear that I respected the process in attempting to organize these hearings. But what I am concerned about is that we may not be getting the fullest review in light of the shortness of the time and also, possibly, limitation on the witnesses.

So I thank the gentleman for his comments.

Mr. LANTOS. Reserve the right to object.

Mr. ZELIFF. Mr. Lantos.

Mr. LANTOS. And I hope I will not need to object, Mr. Chairman.

The question I raise, Mr. Chairman, goes to the very integrity of these hearings. You have not yet answered the question, Mr. Chairman, and you clearly have that option. For the record—for the record, I would like to—if I may continue, Mr. Chairman, for the record, I would like to restate my question and request that you either respond to it, which would clearly be my strong preference, or you indicate for the record that in an unprecedented fashion in terms of congressional collegiality you refuse to answer a legitimate question by a colleague on this committee.

So my question, Mr. Chairman, is, for the record, what in fact has been the involvement of members of your staff in working with the National Rifle Association in a surreptitious fashion in the preparation of these hearings? I would be most grateful if you would respond to this question.

Mr. ZELIFF. Happy to, and I mentioned several times I'll be happy to do it directly to you. As chairman, in my involvement here—and I believe Bill McCollum felt the same way, that we wanted to hear information from anybody in this country that has anything to do with this—we are very happy to receive information. I think that's the critical stage here.

We do not have—I do not have, since you asked me directly the question—a private agenda. I do not feel that the NRA is controlling these as you and others have said. But that's your choice, that's your decision.

Certainly if we heard from Mrs. Brady on the opposite end of that issue or we hear from Chuck Schumer—just let me finish—everybody has an opportunity to put their points of view forward; and I am happy to receive those points of view. I may not agree with those, but I think it's up to us to make sure that whatever evidence we got in the process is evaluated and, if credible, becomes part of this hearing—if not credible, gets rejected.

Now, that's—that's the answer to your question.

Mr. LANTOS. Reclaiming my time, Mr. Chairman, with all due respect—I will be happy to yield to my colleagues in a minute.

Reclaiming my time, Mr. Chairman, with all due respect, you have not responded to the question. The question I ask, and sometimes members of our staff get out of line—

Mr. HYDE. Mr. Chairman.



Mr. LANTOS. It is my considered judgment that your staff members did get out of line by involving the National Rifle Association in a surreptitious manner.

Mr. ZELIFF. We don't agree.

Mr. LANTOS. My question is, did they? Was this done with your approval? If not, what disciplinary action are you planning to take?

Mr. HYDE. Mr. Chairman.

Mr. CONYERS. Would the chairman yield to me? I just want to help the chairman out here, because all I hear Mr. Lantos asking for is your agreement to conduct an investigation into the NRA activity. I think if you would accord him at least that simple affirmation, we might be able to get on with this proceeding.

Mr. HYDE. Mr. Chairman.

Mr. SCHUMER. If the gentleman would yield, I believe it's the gentleman from California's time.

Mr. LANTOS. I would be happy to yield to the gentleman from New York, and then to you.

Mr. SCHUMER. Since I've been active in these objections, we have sent a letter asking that that happen. We have not gotten—we have gotten a response, but it was not responsive to saying either yes or no, whether that would happen.

But I would make this point. The National Rifle Association has every right to make its views known, to let the committee know its views, to be here, just as Sara Brady would. But what I would say is very simply this. When they step—when the line is stepped over, when at least one witness is interviewed by somebody passing themselves off as a member of the committee team, the Waco team, and then only later because she is a diligent and careful person does that person admit that they were from the NRA and that person has mentioned not just names of NRA higher-ups but that she was going to talk to staff members here, then something has gone amuck.

When—we know the story of the first instance; the second instance, Mr. Sanders isn't mentioned. He's listed on the sheet as "former ATF agent," but leaders of the NRA say they are paying him and he's on the payroll. That's the problem here. And we have not gotten a good answer to those questions.

I don't want the record to reflect this is simply a group of people who disagree with the NRA saying they shouldn't be heard.

Mr. HYDE. Would the gentleman yield?

Mr. SCHUMER. Be happy to yield after I finish my point.

Mr. HYDE. Mr. Lantos.

Mr. SCHUMER. Thank you, if the gentleman would just let me finish my point.

Mr. LANTOS. I'm happy to continue to yield to the gentleman from New York and then to the gentleman from Illinois.

Mr. SCHUMER. I'm always happy to hear what the chairman has to say, because he's a fair-minded gentleman. But the point is, what mixture—did the NRA take roles that the staff should have had? Did they do it with the knowledge of the staff? Did they do it with—which other witnesses—I don't have any idea how many other witnesses Ms. Haga, who was the person who interviewed the witness, also interviewed and said she was with Committee Team

Waco, and they may not have been as perceptive as Mrs. Sparks, the witness who discovered this. We don't know that.

Now, we can ask each witness when they come here, but that of course does get us somewhat off track, because they are, as the chairman and both chairpeople have said, separate issues. But there is a cloud. Let's make no mistake about it.

This is not what usually happens in a hearing. There is a cloud hanging over these hearings, and we are attempting in good faith to get that cloud removed. So far, we've been met with silence.

Yield back.

Mr. LANTOS. I am happy to yield to the distinguished chairman of the Judiciary Committee.

Mr. HYDE. I thank my friend for yielding. I think we're getting a little bit afield here.

This woman, who evidently represented herself as from the Waco hearing team, had no connection with the Judiciary subcommittee, and as far as I can determine from talking to staff, no connection with the Government Reform and Oversight subcommittee. She is an independent person, acting independently, and what she said was in fact a misrepresentation, and I would suggest you take it up with her or take it up with the NRA. But don't hang that around this subcommittee or Mr. Zeff's subcommittee.

Now, furthermore, when staffs are preparing for hearings—you used the word “unprecedented;” it is unprecedented to want to know who they're talking with, what their work product is. Certainly on the freedom of access to abortion clinics, the question of who your staffs met with, I don't care; it's none of my business. And who our staffs meet with and their work product and their correspondence and their interviews is confidential. We don't want to know what your staffs have done, and I don't think it's appropriate to delve into the preparation for hearings. That is unprecedented.

I can say—I can say this with all vigor, there is no connection whatsoever between the National Rifle Association, the Gun Owners of America, Sara Brady, Handgun Control, Congress Watch, or any of those organizations in preparation for these hearings. And so I really wish we'd get off this diversion, this side trip, and move forward on what happened at Waco.

Mr. SCHUMER. Would the gentleman yield?

Mr. LANTOS. If I may reclaim my time, and I will yield to my friends, I would like to tell Congressman Hyde with great respect and great affection, this is not a diversion. Some of us view that this undermines the integrity of these hearings.

It is anything but a side issue. It is anything but a diversion. It goes to the integrity of the congressional hearing process, that we all ought to be deeply concerned with.

I will be happy to yield to my chairman—to my colleague from Michigan.

Mr. CONYERS. May I remind Chairman Hyde of the letter that Mr. Schumer and I sent to him?

If the NRA has been working under color of the committee, then certain questions are raised. Undisclosed efforts to have private organizations fund weapons analysis on behalf of the committee raise troubling issues. Both criminal statutes and rules of the House restrict certain activities.

This is not an incidental matter. This is—goes to the heart of the integrity of the hearing. For instance, 22 U.S.C., section 59E, prohibits any member from using an unofficial office account or from defraying officials' expense from any other funds that are not specifically appropriated for official expenses, similar with House Rule 45.

Now, only the chairman can subpoena, issue the subpoenas to quell this problem. And all we're asking, Chairman Zeff, is that you agree, so that Mr. Lantos can withdraw his objection, by agreeing to issue a subpoena to determine the appropriateness—or perhaps inappropriateness, I am afraid—of the conduct of which we're complaining.

This letter has not been answered.

Mr. SCHUMER. Would the gentleman yield?

Mr. LANTOS. That is precisely the basis of my reservation, Mr. Chairman. And if you agree to the point so ably stated by my friend from Michigan, I would withdraw my objection.

I will now yield time to my friend from New York.

Mr. SCHUMER. Yes, Mr. Chairman—I thank the gentleman for yielding—just two points in reference, in response to the gentleman from Illinois, the chairman of—distinguished chairman of this committee.

First of all, what leads us to think that perhaps Ms. Haga, the person who passed herself off as working for the Waco Committee Team, was more involved with the staff of the committee than you are saying, is, she told that to this witness. And in a memo I have here, which she sent to Mark Barnes—who was, I guess, her boss; he's the outside counsel for the NRA—she said everything that—well, I'll quote it.

She said, information and resources—information, resources, and evidence gathered goes to March Bell, who is charged with the coordination of the congressional effort. He is a member of the staff. Now maybe she's just doing this on her own, but it doesn't sound like it, and we ought to know that.

The second point I would make to the distinguished chairman, who talks about a committee's work product being sacrosanct, if I just might—if I just might mention this to the chairman, is, we've spent about a week—I see the counsel for the President negotiated the very same point—that the work product of the President ought to be sacrosanct.

Just, as you say, we don't want our committee staffs to be looking—we don't want everybody to look at how we set up a hearing and how we did this, well, the majority has been spending a week making the opposite point with the President, that his private notes and what he said to his staff, we should be able to examine and perhaps should be public.

We went through a process which, with your good offices and that of Chairman Clinger, worked out OK; and with the generosity and the wisdom of the counsel, the President's counsel, Mr. Mikva. But it certainly seems to me that it is not fair to, on the one hand, say, well, the committee's work product is sacrosanct, but the President's work product is not. The two arguments seem to me to be the same.

I yield back to the gentleman.

Mr. LANTOS. I would be happy to yield to the chairman.

Mr. ZELIFF. I just would like to say that I'd be very happy to be held accountable for our results of these 8 days of hearings. We have worked very hard to work with both sides of the aisle here. We've given—instead of the proportional, we've taken an hour and divided up, equal time for both sides. We have taken and done everything we can to adhere to your requests for witnesses.

I think it's been unprecedented. I think it will be a real shame if we can't move on with our hearings and the schedule that we have here and get to the panel. You certainly are able to ask witnesses that appear before us any questions you want, as to whom they represent. They will be under oath. I just ask you to give us a chance to do what we intended to do. This is the not—

Mr. LANTOS. I will be most happy to give that chance to all of us, Mr. Chairman, if you commit yourself to subpoena the persons requested in the letter.

Mr. ZELIFF. I think what you're doing, and I—

Mr. LANTOS. I'm exercising my prerogatives as a member of this committee.

Mr. ZELIFF. I respect you, but what you're doing is a diversionary tactic that's going to do nothing but throw us off track. We're not trying to waste time now. We have people who have traveled long distances to come here. Let us proceed with what we're trying to do here.

We have agreement from both sides. We selected witnesses. Why not give them a chance to appear before—we'll ask them questions; hold us accountable for results in the end.

Mr. LANTOS. Mr. Chairman, I respectfully request that a subpoena be issued to the individuals indicated in the letter of the distinguished ranking member of the Judiciary Committee. And if that is granted, I will withdraw my objection.

Mr. BLUTE. Mr. Chairman, will the gentleman yield?

Mr. LANTOS. I will be happy to yield to my friend.

Mr. BLUTE. I thank the gentleman for yielding. I would just say that I haven't been in the Congress that long, but I certainly know when there's a coordinated effort to delay and engage in dilatory tactics. And I think it's very important that we move forward with these hearings.

There has been a lot of discussion of the National Rifle Association. I happen to be one of those Members of Congress who has a zero rating from the NRA. I voted for the Brady bill; I voted with the gentleman from New York on the assault weapons ban; I thought those were important. I disagreed with some of my colleagues.

I notice that some members of the minority have 100 percent ratings from the NRA. The point is, that those are irrelevant to—irrelevant to the questions we're asking today about what happened at Waco, TX; and we need to have oversight questions asked, and I think that we should move forward on these hearings in the interests of time and in the interests of our—

Mr. LANTOS. If I may reclaim my time, I agree with the sentiments expressed by my friend. I think it is a matter of collegial courtesy to agree to a reasonable subpoena request. We cannot issue a subpoena on the minority side. Only the chairman has the

authority to proceed with a subpoena, and I am wondering why he's so reluctant to agree to this very simple request——

Mr. SCHUMER. Would the gentleman yield?

Mr. LANTOS. In just one moment.

Which would then enable us to proceed immediately.

There is no reason, Mr. Chairman, why this subpoena should not be issued, except your reluctance to agree to it. And I repeat my request——

Mr. SCHUMER. Would the gentleman yield?

Mr. LANTOS. I will be happy to yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman. And let me make a suggestion here, because we have—even though, as my opening statement is clear and many of the others, we have many doubts about some aspects of these hearings, we do not want to see them delayed, although I completely agree with the gentleman that there is a cloud over these hearings and these questions are legitimate.

What I would suggest is this: Since we are only going to remove our objection for today and tomorrow that objection will hold again at the suggestion of the good lady from New York, that we proceed today, that we meet after the hearing with the gentleman from California; and those of us here, that we meet with the majority membership—leadership this evening, this afternoon and see if we can resolve this issue. And that way we can proceed today and still have our right to insist that the truth come out in reference to the aspects the gentleman brings up.

Mr. CONYERS. I would join the gentleman from New York in his appeal to the gentleman from California, Mr. Lantos. The only delay is coming from the chairman's refusal to give you a Y-E-S on the question of subpoenas, and so in the interest of time, I think pretty clearly everybody that can hear where we are, let's see if we can meet after these hearings today and resolve this matter. And I thank the gentleman for his very important and timely contribution.

Mr. LANTOS. I want to thank all my colleagues, and I withdraw my objection.

Mr. ZELIFF. Without objection, so ordered. Unanimous consent request is agreed to.

[The prepared statements of Messrs. Bryant of Tennessee and Condit follow:]

PREPARED STATEMENT OF HON. ED BRYANT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF  
TENNESSEE

Messrs. Chairman, ours is a government of laws, not of men.

In order to preserve the rule of law, our citizens must be assured that their government -- its institutions, officials, law enforcement agents -- are accountable. Accountability is key to ensuring public confidence in the system under which we all live. And confidence in one's government is essential to the long-term survival of that government and to the peaceable life of that government's citizens.

The abuse of power threatens any society. However, a government of laws gives stability to a nation, a state, or a community. The abuse of power is tyranny.

Messrs. Chairman, when a sizeable portion of our citizens becomes concerned, even fearful, over a perceived lack of accountability by federal law enforcement, the time has come when we need to clear the air.

These hearings, which focus on the incidents at Waco, Texas, involving the Branch Davidians in 1993, are intended in part to demonstrate that our system works. The members of these subcommittees seek to ascertain the truth. We seek to restore the confidence of the American people in their government. We seek to discover and explore the events leading up to and including what many consider excessive force by law enforcement. We seek a more complete revelation of details of the Waco events.

The goal of these hearings, from my perspective, is to discover the truth, to seek answers to unanswered questions that linger, that even have festered since earlier hearings. The surviving Davidians have been tried in court, which yielded new information and mixed verdicts.

With respect to individuals involved on all sides, let the chips fall where they may. Those responsible for breaches of law or policy must be held accountable for their abuses of power. Only by finding the truth can accountability be secured.

If abuses of government power in fact occurred, then we must take what we learn at these hearings and move forward with steps that ensure such abuses of government power won't occur again.

Messrs. Chairman, I believe government has its proper roles. While we don't need or want anarchy, we don't want unlimited government, either. Nor do we want agents who breach our Constitutional rights or God-given rights.

As a United States Attorney, a federal prosecutor, I worked closely with law enforcement personnel at all levels of government. I believe the majority of law enforcement personnel are honorable and only want to do that which is legal and just. These hearings are not intended to bash law enforcement in general or any agency in particular. At least, that is not my purpose in participating in these hearings.

Individuals make decisions and individuals should bear the responsibility for the consequences of their actions. That goes for criminal offenders and those in fiduciary roles of government. I commend the Chairmen for scheduling these hearings so the proper allocation of individual responsibility can be determined.

In the bigger picture, it is my hope that these hearings will help to restore the American people's confidence in their federal government. This country needs a healing, a renewal. I look forward to these hearings and to the healing effect that is so needed in our great nation. Let us do our part to restore the rule of law and the preservation of liberty.

# # #

PREPARED STATEMENT OF HON. GARY A. CONDIT, A REPRESENTATIVE IN CONGRESS FROM THE  
STATE OF CALIFORNIA

Thank you, Mr. Chairman. I would like to thank all those responsible for bringing these hearings about. I think it's very important that we exercise our oversight authority to finally bring about a conclusion to these tragic events which led to the deaths of 4 agents from the Bureau of Alcohol, Tobacco and Firearms (ATF) and more than eighty Branch Davidians at the Davidian compound near Waco, Texas.

Volumes of evidence, including reports from the Department of the Treasury and the Department of Justice, as well as, evidence uncovered during the trial of the surviving Branch Davidians are now available to us. Yet, a large number of questions regarding the initial raid by the ATF, and the FBI siege and CS gas raid that followed, remain unanswered. Questions about why the federal government became involved in the first place, the role of the military, how crucial decisions were reached, and by whom, what alternatives were considered, and why they were rejected all need to be addressed.

Through these hearings, we will be able to examine the decisions and actions of all those involved. It is my hope that as a result of these hearings, we can ensure that policy changes will be made to prevent such tragedies from occurring in the future.

Thank you, Mr. Chairman.



Mr. ZELIFF. I would like to introduce the first panel. And if you would please, three members, please come forward and take your places.

As you're settling into your seats, Dick Reavis is the author of a 2-year research project that is now a book published by Simon and Schuster on the events surrounding the confrontation between law enforcement and the Branch Davidians. The book is right here so everybody can see it. I don't know whether there's a book signing process.

Stuart Wright, Stuart is the editor and a contributor to the forthcoming University of Chicago book on the same topic, entitled Armageddon in Waco.

Ray Jahn, Ray Jahn is the assistant U.S. attorney who prosecuted the Branch Davidians who survived the fire, and I don't know whether he has a book forthcoming or not. I'll let him ascribe to that.

It is the custom of our committees here that we swear in our witnesses. If you'd all please stand.

[Witnesses sworn.]

Mr. ZELIFF. Please be seated. Let the record show that answers were in the affirmative.

Before we go to the witnesses, we have a short film that was created for these hearings by CNN that runs from the February ATF raid through the April fire. We want to thank CNN for this special footage and effort.

We'll now show this, and it's approximately a 3-minute film.

Mr. SCHUMER. Wait a second. Mr. Chairman. Mr. Chairman.

Mr. ZELIFF. Yes.

Mr. SCHUMER. I thank the chairman.

We—in all fairness to the chairman, some of these procedures, including the 15, 5, 5, 5 procedure, we had talked about. And we were informed we would know what would be happening in these hearings. We were given some witnesses, not all that we would like, but many, and we acceded to that.

We didn't know anything about this CNN film clip at all. And I'd like to say to the chairman, one of the things that I appreciated is you've told us, you know, in general, what the structure of the hearings was going to be. The reason for that was not pure generosity; it was because of the 5-minute rule. You've listened to that for the last while.

We didn't know about this. What other—what other—can we go over what's going to happen today from start to finish?

Mr. MCCOLLUM. Will the gentleman yield?

Mr. SCHUMER. Yes.

Mr. MCCOLLUM. The film clip, I haven't even seen myself. As you know, CNN just offered 3 minutes of overview. There's nothing in here that's been edited by us. We haven't had anything to do with it, so presumably it's an objective film.

There's nothing that you don't know about, that I'm aware of, that is going to go on today. We have the three witness panels that have been published.

Mr. SCHUMER. The lists of names that were given to us—

Mr. MCCOLLUM. The list of names that were given to you.

Mr. SCHUMER [continuing]. Last night are the exact names of the witnesses that will be there, none others?

Mr. MCCOLLUM. Not to my knowledge.

Mrs. COLLINS of Illinois. Will the gentleman yield?

Mr. SCHUMER. OK. And is there any other audiovisual aid that's coming?

Mr. MCCOLLUM. No, no other—not that I'm aware of. Not unless some witness has brought something with them they haven't told us about.

Mr. SCHUMER. OK. I yield to the Chair—the ranking minority member of Government Operations.

Mrs. COLLINS of Illinois. I thank you very much. I find this very strange that we'd have a film clip going on here. That's not a part of the process that we all agreed upon. I haven't ever agreed to have any film clips shown here.

Mr. ZELIFF. Would this—

Mrs. COLLINS of Illinois. Furthermore, it's impossible for us to interrogate a film. You know, that is a—

Mr. ZELIFF. Well, what we're trying to do is present what happened. And this is a film report of what happened.

Mrs. COLLINS of Illinois. It's been on television, it's been on "Nightline," and I would object to that film clip being shown at this point in time. It's not a part of the regular procedure.

Mr. CONYERS. Mr. Chairman, could I—

Mr. SCHUMER. I yield to the ranking minority member of the Judiciary Committee.

Mr. CONYERS. Might I just recommend that we get these hearings underway by withdrawing a film clip that no one had notice about, not even Members on your side? I don't see where that's going to add.

Here are two authors of the book. I don't know what more CNN can contribute to this.

Mr. ZELIFF. We are not asking unanimous consent to show this film.

Mrs. COLLINS of Illinois. We'll pull the plug.

Mr. ZELIFF. We plan to show the film.

Mr. SCHUMER. Just reclaiming my time, there was—there is great dispute about parts of this hearing, as is obvious. There was also some level of comity, and that comity involved the fact that we would know what, each day—what was going to happen each day. Not in terms of what the witnesses would say or what questions were asked, but rather, who was testifying, who they were, how the panels would be structured and how the questioning would go.

I don't—I doubt there's any problem with the 3-minute tape on CNN. CNN is not a—well, I—

Mr. ZELIFF. The gentleman's time has expired. Please proceed with the film.

Mr. SCHUMER. I ask unanimous consent to make my point for an additional minute.

Mr. ZELIFF. We're going to proceed with the film.

Mr. WATT. Mr. Chairman.

Mr. SCHUMER. The Chair is denying unanimous consent that I speak for another minute to make my point here?

Mr. ZELIFF. Is there objection?

Mr. SCHUMER. I thank—

Mr. MICA. I reserve the right to object.

Mr. ZELIFF. The gentleman reserves the right to object.

Mr. MICA. Mr. Chairman, I reserve the right to object, and I regret that I have to take this step. But we have seen delaying tactics by the minority that, in my estimation, are unprecedented.

It's obvious that the minority, first of all, hasn't taken the time to consult with the minority members, nor to fairly distribute time to their memberships, or to impart with them the procedures.

Furthermore, the majority side has bent over backward to provide witnesses. The majority side did not know that in fact they were going to spend the first hour of this hearing, or more, in dilatory tactics, to use the occasion to bash various organizations or interests with which they disagree.

And, Mr. Chairman, I move that the joint subcommittees do view this film.

Mr. SCHUMER. Mr. Chairman, would the gentleman yield?

Mr. ZELIFF. A motion is in order to consider the evidence.

Mr. MICA. I will not yield and I ask, if necessary, the previous question on my motion.

Mr. WATT. Mr. Chairman, I wish to be heard on the motion. Mr. Chairman, I wish to be heard on the motion.

Mr. MICA. Mr. Chairman, I have a motion, and I—

Mr. WATT. Mr. Chairman, I wish to be heard on the motion.

Mr. ZELIFF. Can we move back? His time has not expired, and we'd like to give him his time to finish.

Mr. MICA. Well, I'll withdraw my motion.

Mr. SCHUMER. I will try to be brief.

Mr. MICA. Withdraw my motion at this time and give him the courtesy.

Mr. SCHUMER. I would remind my friend from Florida, if we wanted to be dilatory, any one of us could object to these procedures and throw the whole thing into tumult and stop them for today. We're trying to get fairness from our point of view, which I hope the gentleman will respect.

All I was asking is, are there going to be any other things that we didn't—that we weren't told about that were happening today, other than this 3-minute film?

Mr. ZELIFF. No. And as far as I know—

Mr. SCHUMER. Thank you. I have no problem with proceeding with the film.

Mr. WATT. Mr. Chairman, parliamentary inquiry.

Mr. ZELIFF. Proceed with your parliamentary inquiry.

Mr. WATT. Mr. Chairman, I was not aware that showing a film clip as a part of a hearing was part of the regular order. Could you cite me to a rule that sanctions this?

We have a list of witnesses that has been distributed to everybody. And I have never—I mean, I consider—this is just my second term here, but I never participated in a hearing that started with—by the showing of a film clip of any kind. I thought we were here to hear witnesses and, for those who are allowed to participate in the process, question those witnesses. Even those people who have been sanctioned to participate in the questioning process are not going to be able to question this film clip.

So I—the question I am asking, my parliamentary inquiry is, what is it in the rules that sanctions this process?

Mr. ZELIFF. Rule XI, clause 2(k)(8), in the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinency of testimony and evidence adduced at the hearing.

Mr. WATT. Mr. Chairman, this film clip is not submitted by any witness.

Mr. ZELIFF. That is evidence as to what happened at Waco.

Mr. WATT. There's no witness who has requested that this film clip be submitted in connection with their testimony. And I would submit to the chairman that this rule is not—does not sanction this.

Mr. ZELIFF. The subcommittee is choosing to receive this 3-minute clip as evidence.

Mr. WATT. From whom?

Mr. ZELIFF. I have received it from CNN.

Mr. WATT. Mr. Chairman, I—

Mr. ZELIFF. From CNN.

Mr. WATT. I repeat my parliamentary inquiry, what is it in the rules which sanctions your ability to come in and show us a film clip without proceeding in the regular order of the hearing, which has already been agreed to?

Mr. MICA. Mr. Chairman, may I speak to the gentleman's point?

I served on the Government Operations subcommittee, which is a predecessor to Government Reform and Oversight, and I can cite a precedent for this. I served under Mr. Synar, who was chairman of the Energy, Environmental, Natural Resources Subcommittee, and I was subjected to at least a 3-minute film clip in which white mice were put on carpeting that was taken from the—at this time it wasn't revealed, but the carpeting that was taken from the House Chambers supposedly. The little white mice rolled over on their backs and subsequently expired.

I was not given—I was not given notice of this and, in fact, we found out the reason that the carpeting had been—

Mr. WATT. Mr. Chairman, reclaiming my time, reclaiming my time on the point of order—

Mr. MICA [continuing]. Carpeting that was in fact treated with a bug spray, and that's what killed the—that's what killed the white mice. So there is precedent.

Mr. WATT. Reclaiming my time on the point of order.

Mr. ZELIFF. Can I—

Mr. WATT. Reclaiming my time on the point of order, Mr. Chairman.

Mr. ZELIFF. Yes.

Mr. WATT. I take it that the gentleman's analysis is that two wrongs make a right and we should therefore agree to this.

Mr. ZELIFF. Can I appeal to you—

Mr. WATT. All I asked was, is there a provision in the rules of this House or this committee which sanctions this proceeding? And—

Mr. ZELIFF. Yes, there is.

Mr. WATT. I'm not trying to delay this. I would just like to know what the rule is, and the rule that the chairman read to me simply doesn't get us there.

Mr. COBLE. Mr. Chairman.

Mr. CLINGER. Mr. Chairman, if I may address, I think the point was made——

Mr. WATT. Mr. Chairman, I've been encouraged by my side to withdraw my objection. I still don't see anything in the rules that allows this.

I withdraw my reservation, the right or reservation of objection.

Mr. ZELIFF. We'll be happy to work with you and show you the rule. Thank you.

Mr. WATT. It's obvious that you all are going to run this hearing just like you want to run it anyway, regardless of the rules.

Mr. ZELIFF. I will be happy to work with you and go and discuss that rule with you.

We now would like to proceed with the film.

[Film played.]

Mr. ZELIFF. We'll proceed with the first witness, Mr. Reavis. Thank you for being here.

And we appreciate CNN for supplying that film.

Proceed.

#### **STATEMENT OF DICK J. REAVIS, AUTHOR OF "THE ASHES OF WACO"**

Mr. REAVIS. I don't have anything to do with CNN supplying the film.

Mr. ZELIFF. Right, I understand that. You each have 15 minutes and we appreciate very much your being here.

Mr. REAVIS. Is this microphone on?

Mr. ZELIFF. It sure is.

Mr. REAVIS. I'd like to start by thanking the members of and the staff of this committee forgiving me, a journalist, a chance to talk to our Government about what happened in Waco in 1993.

I want to emphasize that I come to you as a journalist. That means that I'm not an expert. As you must know from your own sad experience, I'm not an expert on anything. I think the job of journalist is not merely to repeat what experts and authorities tell us, but to look at it in the light of common sense. And I think that's the job that the members of these committees now face for yourselves.

I want to give you an overview of some of the things that happened in 1993 in Waco, and insofar as I can, explain why they did. I have cut the remarks I wanted to present, in view of the ruckus that I've just witnessed here, which is taking time from everyone.

In brief, what I cut says that David Koresh's community was founded in 1934. It had doctrines and traditions that dated back to 1844. David Koresh did not invent the doctrine he taught. He altered the doctrine he taught. The people who followed him did not follow him because he was David Koresh; they followed him because what he said made sense of the tradition from which they came, as far as they could see it.

His followers—whatever David Koresh was, his followers were rational people who were capable of evaluating things and rejecting them, and some did; others accepted him.

One of the prophecies that had been around Mount Carmel since 1934 called for an ultimate confrontation between God's people or those at Mount Carmel, and the voices of an armed apostate power, called Babylon, which in most fundamentalist literature is recognized or, I might even say, is identified with the United States or the United Nations.

Perhaps Koresh had looked at those prophecies, and his own twist on them—and it was only a twist on existing prophecies—was that the confrontation would take place in 1995. Perhaps with that in mind, in 1991, he began studying armaments and buying and selling guns.

He pretty quickly found out there's a lot of money to be made at gun shows, and he and other people started going to gun shows. They bought and sold. They bought items that weren't guns and they bought items that were guns.

We now say, or the press now says and most people say, they stockpiled weapons. All gun dealers stockpile weapons. All gun shops stockpile weapons. We call those stockpiles an inventory. There was an inventory of weapons at Mount Carmel.

A number of guys were involved in the gun shows, just as a number were involved in souping up and restoring cars, and just as a number were involved in playing in the band. There were circles or knots or subsets of people who had hobby interests that were only indirectly related to theology, and guns were one of those interests.

Those guys knew how to use guns. The rest of the people there did not necessarily know how to use guns. Some of them were older women in their seventies who were not capable of using guns. Many of them were children who weren't as tall as the rifles.

In June, 1992, the ATF was advised that someone at Mount Carmel had ordered a box of dummy grenades.

These grenades are legal in trade. They are used for paperweights, novelty items and one thing and another. And though ultimately some of those grenades were armed and used as weapons, the survivors say they were initially bought to trade onto ammunition vests that they made at Mount Carmel and sold at gun shows.

The ATF began its investigation. Its investigation led to the house of Henry McMahon, who will testify before you. The ATF was questioning McMahon about some guns that Koresh owned. McMahon says that his girlfriend, Karen Kilpatrick, has testified under oath that McMahon picked up a portable phone and called Koresh. This was July 30, 1992.

He said, David, the ATF is here asking questions about your guns. Koresh says, tell them to come out and see me. McMahon offers the phone with Koresh on the line to Special Agent Davey Aguilera, who in court testimony said that he made this motion, he would not accept the call.

The ATF refused to visit Koresh and did not ever speak to him until February 28, 1993, when its words were, "Police, search warrant, lay down."

One of the things that must be asked—and I'm not sure if we can get an answer at this point because Koresh is dead—is when he converted weapons illegally from semiautomatic to automatic. My suspicion would be that at some point he says, The ATF is investigating me and it doesn't want to talk to me. Aha, the Army of Babylon is preparing its attack.

The affidavit that ultimately came out of the ATF's investigation is weak on several points. There is no evidence between August 1992, no notations, and November 1992 as if perhaps the investigation had been dropped. I would like to know if that's the case. I have not been able to find out. I hope your committee can find out why was there no activity from August to November.

In November, Aguilera and other people began interviewing old associates of Koresh, dissident followers who didn't know much about guns or much about Koresh's fascination with guns, but did know a lot about child abuse and statutory rape.

My investigations convince me that David Koresh was guilty of statutory rape. But I don't understand why two-thirds of the search warrant is about child abuse and statutory rape when the ATF has no jurisdiction over those offenses.

What—in a word, what the search warrant found was gun parts—legal gun parts, but in this way. Both the hacksaw and a shotgun are legal; anybody can buy them. Owning a sawed-off shotgun is not legal. It is the duty of the ATF to show that those gun parts were owned with an intent to create illegal weapons. I'm not a lawyer or a judge, but my reading of the warrant does not convince me that that intent is there. Though we know that in fact the guilt was there, someone inside Mount Carmel did convert those weapons.

The next question that I encountered during my research, or the next important one, was whether or not the raid on February 28 was necessary. And I want to speak particularly to those of you who are Congressmen here because I believe the ATF has attempted to mislead our Congress when its executives have spoken to you in the past about the necessity for the raid.

In April 1993, David Troy, an ATF executive, testified before the House Subcommittee on Appropriations, and he said that the raid was necessary because—and I want to quote him directly from the Congressional Record—"We never saw him off the compound until after we had an arrest warrant for him."

Troy did not tell the subcommittee that the arrest warrant was issued just 3 days earlier, on February 25, and that ATF agents had begun training for the raid on February 24.

In June, 1993, Dan Hartnett, another ATF executive, testified to Congress that "There was no time from the time in January until the day of the raid that we had ever seen him off the compound."

Now, the ATF conducted surveillance for about 30 days prior to the raid from a house 200 yards from Mount Carmel's front door. And as it turned out, on January 17, David Koresh was next door to the ATF's undercover house in the home of the landlord of that undercover house.

On January 29, according to testimony in the San Antonio trial, he signed a receipt in Waco for some machine work on a motor; the receipt was introduced into evidence in the San Antonio trial. And

on February 24, 4 days before the raid, he visited a junkyard in Waco. A junkyard employee testified under oath to that.

If, as Mr. Hartnett told the Congress, they had never seen him off the compound and they had him under surveillance, I don't understand what their surveillance people were doing.

Next question becomes, in the Treasury Department's report on the events at Mount Carmel, it says that the raid failed, causing the death of those four agents and the wounding of others because the element of surprise was lost. I think that you all should probe to see if the element of surprise was important. The advice the ATF was given before the raid by the Green Berets, and after the raid by almost every commentator, was that if you want to surprise someone you raid them at dawn.

Two men were dismissed from the ATF, Agents Sarabyn and Chojnacki, because they allowed the raid to go ahead despite knowing that the element of surprise was lost. They were fired, but they kept their mouths shut. Everyone who was still on active duty in the ATF was under a gag order. They kept their mouths shut and appealed to a civil service court, to arbitration. Sarabyn's brief in that civil service arbitration says, and I'll read a direct quote, For the agency to contend that surprise was the focus of Agent Sarabyn is to misstate the decision to proceed with the raid, end of quote. That civil service arbitration hearing was not open to the public, and I don't know on what basis it made its decision, but it reinstated both Sarabyn and Chojnacki.

The next question that I think is important involves the helicopters that flew over Mount Carmel. According to the ATF's report, they came simultaneously. According to the testimony of their pilots in the San Antonio trial, in which Mr. Jahn was prosecutor, they came perhaps 30 seconds after the ground troops had arrived.

But at that trial, two Waco reporters Dan Mulloney and John McLemore showed a film they had made. They had been a half mile away from Mount Carmel at an intersection, 2491 and Double E Ranch Road, filming helicopters as these helicopters made three passes over Mount Carmel at close range. They got the third pass on film. They were putting away their equipment when the cattle trailers drove by carrying the ATF ground raiders. So they pulled in behind those cattle trailers and followed them into Mount Carmel and produced the footage we've all seen.

What their testimony and film proves is that those helicopters came over first probably a minute and a half before the ground troops got there, and that's important because the first shot, both sides say—in this context, both sides would have to say—was either toward those helicopters or from those helicopters.

At the San Antonio trial, Mr. Jahn and his associates were able to bring about a conviction of a man named Kevin Whitecliff for having shot at those helicopters. The residents of Mount Carmel say that those helicopters shot at them. They claim the shots came first. Attorneys Dick DeGuerin and Jack Zimmerman, who visited Mount Carmel during the siege, say they examined bullet holes in the roof and Zimmerman is a Reserve Marine officer. He'll let you know that in a minute. And he says those bullets came from above, from up in the air, into the house.



At the trial, no one in that helicopter—a pilot testified that he thinks no one in his helicopter fired, but none of the ATF agents who were armed in those helicopters took the stand. One of them will come before you in this hearing, Davey Aguilera. I would like for you all to ask him if he or anyone else in those helicopters fired upon Mount Carmel.

The use of the helicopters is controversial because in order to get them, or in the process of getting them, the ATF told both the Department of Defense and the Texas National Guard that it needed them for drug interdiction. It claimed there was a methamphetamine lab at Mount Carmel and 11 drug traffickers.

The list of 11 drug traffickers was presented to Congress in one of the hearings, and I checked out the names. One man at Mount Carmel was busted for pot in 1983, 5 years before he came to Mount Carmel. Two of the names listed were the names of people who David threw out of Mount Carmel in 1988, because he suspected them of running a drug lab.

Mr. ZELIFF. Mr. Reavis, your time has just about expired, if you would try to summarize.

Mr. REAVIS. I will finish this right on. One of the people named was a 71-year-old lady, who—I called the arresting officers cited by the ATF in Congress, and they said they'd never heard of her. The same for Katherine Schroeder and her husband Michael. That charge of the drug lab is fabricated.

I will close now without talking about the fire but I want to make one appeal to you all. Like any good journalist, I started my book by writing the Government agencies involved and asking for information. The Freedom of Information Act has become the stalling act. I received letters 2 months later saying wait 6 months at a minimum. Some of the documents I requested were scheduled for release in 1999, and the year 2000. The Freedom of Information Act in all the agencies I know is being ignored. How can the Government tell the people what really happened if the Government won't turn loose of its records?

Thank you.

Mr. ZELIFF. Thank you, Mr. Reavis.

[The prepared statement of Mr. Reavis follows:]

## PREPARED STATEMENT OF DICK J. REAVIS, AUTHOR OF "THE ASHES OF WACO"

I would like to thank the members and staff of this committee for the opportunity to talk to our government about the 1993 events at Mt. Carmel. It is my purpose to give you an overview of what happened there, and insofar as I can, to explain why.

The community that we today know as Mt. Carmel was founded in 1934 after a Bulgarian immigrant named Victor Houteff was ousted from the Seventh Day Adventist Church, a Protestant denomination which now claims some 8 million members around the globe, a million of them in the United States. Houteff bought land in the Waco area, and with his followers, raised an encampment which included a community store and a theological school. At Mt. Carmel during Houteff's reign, each morning students swore allegiance to a flag of Christianity, and afterwards, to the flag of the United States. Yet the settlement lived in peace with its neighbors.

Houteff called his community Mt. Carmel, after a Biblical reference, and called his organization the Davidian Seventh Day Adventist Association. While he lived, Mt. Carmel prospered and its faithful put down roots, though they regarded their long stay with irony. The original settlers hadn't planned to be in Waco for long. They thought that Houteff was "the antitypical Elijah," here on earth to announce the Second Coming of Christ.

When the announcement was made--it never was--they expected to move to Palestine to greet the Returned Savior on Mt. Zion. This expectation never died at Mt. Carmel, and David Koresh's followers still look forward to a future reunion in today's Israel.

During Houteff's tenure at what would be called the Old Mt. Carmel, the residents adopted a set of rules for self-government which, in effect, made their leader a king. All authority derived from the man whom the followers believed was a living prophet. Nothing in those rules had changed by the time of Koresh's rise as Mt. Carmel's leader, in 1987. For nearly fifty years before the events of 1993, Mt. Carmel lived in obedience to a theological king. Yet there was no conflict with the outside world.

A struggle for succession ensued when Victor Houteff died in 1955, and its winner, at least in the Waco area, was a faction that called itself the Branch Davidian Seventh Day Adventist Association, led by Benjamin Roden. Roden settled his flock at what was then called the New Mt. Carmel, the site that we know as Mt. Carmel today.

Seventh Day Adventists of all stripes base their faith on the Bible and upon the voluminous writings of a 19th century American seer, Ellen G. White. Davidians--and there are still groups which bear the name and practice--cite Houteff's works as inspired as well. Roden's Branch Davidians added the works of their leader to the sect's canon, and when Benjamin Roden died in 1978, his successor, Lois Roden, contributed new doctrines of her own. In honor of her innovations--Lois is best-known for saying that the

Holy Spirit is female--she renamed the group the Living Waters Branch Davidian Seventh Day Adventist Association. When David Koresh, then known as Vernon Howell, drifted into Mt. Carmel in 1983, Lois Roden was its prophet. Howell was an acolyte in a group with a cumbersome name and an increasingly complex theology, and his status called upon him to follow, not lead. One may call a group such as this a cult--or a nation, or even a menagerie--but terms like that do violence to the facts. The followers of David Koresh did not practice a new religion--their religion was Christianity--and they were not sufficiently organized or widespread as to be a denomination. They were a sect, like thousands of other groups that have uneventfully come and gone in the past.

A part of the prophecies that Vernon Howell inherited from the Bible and his predecessors called for a confrontation between God's believers and the forces of an apostate power which, in the fundamentalist milieu, is usually identified as the United States or the United Nations. Koresh's interpretation of these doctrines was that the confrontation would probably take place in 1995. Perhaps in preparation for that eventuality, in late 1991 he began buying guns and studying armaments. In the process, he learned that fortunes can be made by vendors at weekend gun shows. Within a few months, Koresh and a handful of associates were not only buying but also selling goods at the shows--ammunition vests, or "mag bags," gas masks and Meals-Ready-to-Eat, or packaged military rations. They did it for fun, to learn, and to make a profit. They were later accused of having "stockpiled" weapons;

all gun dealers do that. Gun traders' "stockpiles" are generally called "inventories."

Gun show activity at Mt. Carmel did not involve all or even a great number of its residents. Mt. Carmel's gun show guys were like its hot rod mechanics and musicians. They were a knot, or circle, or subset of the general population, a crowd of men who had hobby interests that were only indirectly related to theological objectives and beliefs.

An investigation of Mt. Carmel was opened by the Bureau of Alcohol, Tobacco and Firearms in June 1992, when it was learned that a resident had mail-ordered a box of dummy grenades. The investigation led to the home of Henry McMahon and his girlfriend, Karen Kilpatrick, who were financial partners of Koresh in some of his gun show activities. In July 1992, while two ATF agents were questioning him, McMahon telephoned Koresh, who said that he'd be happy to show the agents the guns that were inside Mt. Carmel. McMahon, in a statement to the ATF, and Kilpatrick, in sworn court testimony, say that McMahon offered the telephone to ATF agent Danny Aguilera while Koresh was still on the line. Aguilera wouldn't take the call. Not one ATF agent spoke to Koresh until the raid of Feb. 28.

Among the things that I hope that your committee will be able to discover during its process is what, exactly, the ATF was doing to further the Koresh investigation between August and November of 1992, or alternately, what case agent Aguilera was doing. The search warrant sworn by Aguilera reflects no activity during that span, as if the agency had dropped or

suspended the case. In November, December, and January, Aguilera and others interviewed dissident former residents of Mt. Carmel, and about two-thirds of the text of the agency's search warrant affidavit comes from those interviews. The former residents had little personal knowledge about guns and only the barest anecdotes about Koresh's fascination with armaments. Instead, they told tales of child abuse and statutory rape. My own inquiries have convinced me that Koresh was guilty of statutory rape, and that many of the adults at Mt. Carmel were guilty of contributing to the delinquency of minors. But the ATF has no jurisdiction over those offenses, no authority to investigate allegations of that kind.

On the merits, Aguilera's affidavit was weak. He was looking for bombs and machine guns. David Koresh had not bought any of those. The fear was that he'd assembled them. What Aguilera had traced were gun parts. It was as if the agent had encountered a suspect who had purchased both a hacksaw and a shotgun: these are legal items of trade, but possession of a sawed-off shotgun is ordinarily an offense. Aguilera did not know whether or not Koresh had converted any weapons to automatic fire--though apparently he had--nor did he have any significant, timely, or pointed information about any attempt to do so.

The Treasury Department, in its September 1993 report on the Mt. Carmel events, maintained that there was no written plan for the "dynamic entry" staged by the ATF. The lack of written plans, or their withholding by the ATF, puts serious obstacles in the way of any journalist.

The Treasury report claims that the raid was code-named Trojan Horse, but no documents testify to this. The only evidence that's available comes from agents who participated in the assault. And they say that it was referred to as "Showtime," raising the suggestion that the raid was staged with publicity, not necessity, in mind.

ATF executives and former executives, I believe, have deliberately tried to mislead the Congress and the public on this point. In an April 1993 appearance before a House subcommittee on appropriations, ATF intelligence chief David Troy testified that the raid was necessary to arrest Koresh, because, "We never saw him off the compound until after we had an arrest warrant for him...". He did not tell the subcommittee that the arrest warrant was issued just three days earlier, on Feb. 25, and that ATF agents had begun training for the raid on Feb. 24.

In June 1993, ATF executive Dan Hartnett told another Congressional committee that the agency didn't arrest Koresh outside, "because there was no time...from a time in January until the day of the raid that we had ever seen him off the compound." The date, had he given it, might have been Jan. 17, when Koresh visited what is known as the Spoon residence, next door to the house where ATF undercover agents were conducting surveillance. Or it might have been as late as Jan. 29, when Koresh visited a Waco area auto machine shop, or Feb. 24, when, according to sworn testimony, he visited a junkyard in town.

Most of you are familiar with reports that the raid failed, resulting in the death of four agents and the wounding of others, because the residents of Mt. Carmel had been tipped to an attack. The official explanation is that the raiders hoped to catch Mt. Carmel's males working on a construction project, a tornado shelter or "pit"--yards away from their weapons, which were kept indoors. The Treasury report says that two agents who had the authority to cancel the raid, Phil Chojnacki and Charles Sarabyn, should have done so when they were told that surprise had been lost. Because they didn't, they were ultimately dismissed from their jobs. But they were reinstated after appealing to civil service arbitration. In his appeal, agent Sarabyn's attorney argued that, "For the agency to contend that 'surprise' ....[was] the focus of Agent Sarabyn is to misstate the decision to proceed with the raid..." Indeed, according to Sarabyn's brief, while the raiders were assembling, they were told that it had been raining at Mt. Carmel, that the "pit" was knee-deep in water, and that no one was likely to be outside.

Controversy still surrounds most of the events that followed, and unless your committee can clarify the facts, it should. An egregious example is the role played by National Guard helicopters in connection with the assault. The Treasury report says that the helicopters were to arrive simultaneously with the ground troops; testimony in the San Antonio trial indicates that they may have arrived a few seconds later. Neither of these reports squares with the facts. Two television newsmen, Dan Mulloney and John McLemore, were a half-mile to a mile south of Mt. Carmel when the



helicopters came into view. The reporters removed their equipment from their vehicle and managed to film the third pass of the helicopters over Mt. Carmel at close range. After that third pass, the helicopters flew away. Mulloney and McLemore were reloading their equipment when the cattle trailers carrying the ground raiders drove past. They followed the raiders into Mt. Carmel and produced the footage that we all have seen. Not only their sworn testimony but their film shows that the ground troops reached Mt. Carmel after the helicopters had left.

This is an important observation because the first shots fired at Mt. Carmel were not fired at the ground troops, or by the ground troops, but at the helicopters—or from them. In the San Antonio trial, prosecutors argued that Kevin Whitecliff, a survivor who is now in prison, had fired upon the helicopters. Jerry Seagraves, the Warrant Officer who piloted a helicopter that carried several ATF executives in combat uniform, denied that anyone discharged a weapon from his craft. But he confessed that the ATFers on board were armed. A prosecution witness at the trial, former Mt. Carmel resident Marjorie Thomas, testified by deposition that one of the helicopters fired into the window where she stood. Attorneys Jack Zimmermann and Dick DeGuerin, who entered Mt. Carmel during the 51-day siege, both say that they saw bullet holes in ceilings. Debris around the holes convinced them that bullets had entered from above. Residents of Mt. Carmel who are willing to testify under oath say that Winston Blake, one of their number, was killed by aerial shots.

The inclusion of military aircraft in the raid is itself subject to controversy. My understanding of our law is that military forces may not be used against the civilian population except in furtherance of drug interdiction. In its requests for Department of Defense and National Guard training and equipment, ATF planners asserted that a methamphetamine lab was being operated at Mt. Carmel, and that eleven of its residents had records of drug involvement.

The charges are mostly exaggerations and fabrications from old cloth. It is probably true that five of those named had used drugs prior to taking up residence at Mt. Carmel, and one of the five had been arrested for pot possession in 1983, some five years before he accepted the sect's faith. But the truth ends there.

Among those named on the ATF's list of eleven, published in the Congressional Record, are Donnie Joe Harvey and Roy Lee Wells. Koresh kicked them out of Mt. Carmel in 1988 when he retook the property from a rival and assumed his kingship there. The ATF knew that these men were long gone from Mt. Carmel because its informant on the drug issue told them so. According to the story he and others tell, Koresh expelled the pair because they had never been believers and somebody--he suspected them--had been operating a drug lab on the premises.

The ATF told the Congress and people that Margaret Lawson had been arrested in Los Angeles in 1988 while attempting to smuggle some 10 pounds of cocaine into the country. Lawson says that she never left Texas after joining

the Koresh group in 1987. Los Angeles police and customs authorities say that they've never heard of her, and she is an unlikely suspect: Margaret Lawson would have been 71 years old at the time of the supposed offense. I also checked into the charges raised against Michael and Kathryn Schroeder and found them to be likewise without basis. No record of these arrests exists, and the agency has not explained its accusations. The ATF apparently abused the trust of the National Guard and the Department of Defense in order to wheedle assistance.

Shots were fired at Mt. Carmel almost as soon as the ground raiders climbed out of their vehicles. In interviews shortly after the event, several of the raiders said that their initial assumptions, drawn from their understanding of the raid plan, were that the first shots were fired by ATF agents at Mt. Carmel's dogs. The residents claimed that the first shots directed toward human beings were fired through one of the building's twin front doors, and if that's true, it's a serious charge: federal law enforcement officers are forbidden to fire at unseen targets. During the 51-day siege, David Koresh and his assistant, Steven Schneider, repeatedly told FBI negotiators that the front doors would prove that the ATF had broken its rules. But when Texas Rangers took charge of the ashes of Mt. Carmel—some three hours after FBI and ATF agents left—they could not find the door in question. Video footage shows that it had been in place only hours earlier, and its twin was found, uncharred and unstained by smoke.

The events of the 51-day siege are less dramatic, perhaps, but no less worrisome, especially from a mother's point of view. There is ample evidence that the field command, or FBI troops on the ground, attempted to sabotage any progress that the agency's negotiators made. Most troubling of all, they played fast with requests from the residents for milk. On March 4, David Koresh requested six gallons of milk in exchange for the release of a child named Heather Jones. An FBI negotiator agreed. "Let's get her out and then let me send you the milk," he pledged. But no milk was sent. On March 7, FBI spokesman Bob Ricks told the press that, "We said we're ready and willing to bring the milk in, and they rejected the offer to deliver milk." This was not true: what was true, as transcripts and tapes of the negotiations show, was that instead of sending in six gallons of milk in exchange for Heather, as it had promised to do, the FBI was demanding that Koresh first surrender an additional four children. On March 8, through local sheriff Jack Harwell, Koresh was at last able to secure the milk's delivery. In the press, Harwell was credited with having talked Koresh into "accepting" it.

Seventy-six people died during the April 19 fire at Mt. Carmel. The blaze culminated an assault in which tanks rammed Mt. Carmel and injected tear gas into its recesses. This assault was made with the approval of Attorney General Janet Reno, after, she says, consultation with Justice Department figures and experts provided to her by the FBI. Her advisors, she insists, told her that "CS gas, or tear gas, is a non-lethal, non-flammable, particulant that causes no long-term harmful effects, even to infants, pregnant women, and

the elderly, and persons with open wounds...The propellant used with the CS gas was carbon dioxide which is also non-flammable."

Reno's reference to "the propellant" involves one of the key issues surrounding the fire. CS is a white powder. It becomes a gas only when mixed with other substances. As Reno pointed out, the CS used in the initial phase of the April 19 assault was mixed with carbon dioxide, which is essentially harmless. But the initial phase of the assault lasted less than five minutes. After that, canisters of CS mixed with methylene chloride were fired into windows and openings at Mt. Carmel for about six hours. Documents that I've run across, pages from standard reference works in the chemical field, and notably, a monograph published by the UN's World Health Organization, show that methylene chloride is hardly beneficent. The WHO bulletin, written for the benefit of workers who must handle this chemical on their jobs, is blunt. "Do not use methylene chloride in the vicinity of a fire, a hot surface (e.g., a portable heating unit), or during welding," it cautions. "Another reference warns that methylene chloride "forms flammable mixture with air" and says that, "poisonous gases are produced in fire." A notice from the American Chemical Society says that "closed containers exposed to heat may explode." The WHO monograph advises that inhalation of methylene chloride vapors can cause, "headache; nausea; dullness; dizziness; irritation of respiratory tract...effects on the central nervous system, such as behavioural disturbances...unconsciousness, death." In a word, methylene chloride--formerly an ingredient in paint

strippers--is not the sort of chemical that you want to throw into an enclosed setting, especially where children are present.

I have reviewed all of the evidence that I know to be available to the public, and I cannot tell you who ignited the fire that burned Mt. Carmel to the ground. My own suspicion is that a spark or a flame from one of the lanterns in use inside--Mt. Carmel's electricity supply was cut off March 9--ignited an atmosphere saturated with methylene chloride fumes. But I do not know what happened, nor do I know anyone who does.

However, I do know that David Koresh was planning to surrender as late as the night before the fatal blaze. I have read transcripts of the telephone conversations between Mt. Carmel and the FBI, and they show that in accord with a promise made on April 14, he was for the first time in his life writing an explanation of the Seven Seals, the biblical mystery that he thought explained who and what he was. The negotiation transcripts show that Koresh claimed to have finished work on his exposition of the First Seal, and to have penned a rough draft of the Second Seal. Survivors say that he spent most of the night of the 18th working on the project. One of them leaped out of the fire carrying in her pocket a computer disc containing a version of his First Seal exegesis: I am sure that the document is available to you today. Perhaps, as FBI spokesmen claimed, the project was merely a ruse, and Koresh would have betrayed or altered the promise that he'd made to God. We will never know. What we do know is that the agency's claim that he

was not working on the Seals was false, and the FBI knew as much at the time.

In the early stages of writing my book about the world of Mt. Carmel and the events of 1993, I sought, as any journalist should, the aid of my government. I asked the ATF and FBI to put me in touch with the raiders and besiegers of Mt. Carmel. I was told that they were under a gag order, and I believe that they still are. I peppered the Freedom of Information offices of both agencies with requests for documents, and a few were eventually granted to me. But the provisions of FOIA have been undermined. Though our laws require a timely response to public requests, FOIA processing now takes six months to five years: some of the documents that I eventually tapped by other means were promised to FOIA supplicants--for delivery in 1999 or 2000! Thanks to your recent inquiries, some of those documents are now being released. I would hope that through your influence, you can restore compliance with the Freedom of Information Act among all of the agencies that you oversee.

Two years have passed since the events at Mt. Carmel, yet the public has not been fully informed. We have never been told exactly how many men and women participated in the Feb. 28 raid, though estimates place the number at between 75 and 100. All of the raiders were presumably interviewed by the Texas Rangers as part of their investigation of the affair, and federal prosecutors no doubt are in possession of those interview reports. But less than two dozen of them have been declassified. As a journalist and as

a citizen, I see no reason for such secrecy. Nothing good comes of it, and conspiracy theories thrive in the shadows that secrecy casts. In a democracy, the people are supposed to rule. We cannot rise to our task without information. If our government is accountable to us, it will tell us--through you, if in no other way--all that it can. My sincerest wish is that you will succeed in bringing the light of truth to the controversial subject that lies ahead in your investigation.



Mr. ZELIFF. Mr. Wright.

Mr. SCHIFF. Mr. Chairman, before the witness begins, I have a parliamentary inquiry. Will the witnesses' full statements be made a part of record?

Mr. ZELIFF. Yes, absolutely. Without objection, so ordered.

Mr. REAVIS. There should be 100 copies.

Mr. ZELIFF. Do you have a copy? John, you got it when we got them. You have it. Locate it. Does everybody else have it?

Mr. REAVIS. I have some FOIA letters I would like to introduce. Can I hand them to someone?

Mr. ZELIFF. Without objection, so ordered. Someone pick them up.

[The information follows:]



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

AUG 24 1994

Mr. Dick J. Reavis  
P.O. Box 4830  
Dallas, Texas 75208

Dear Mr. Reavis:

We recently received your letter requesting interviews with Special Agents Robert Rodriguez and Davey Aguilera.

Because of ongoing litigation involving certain special agents from the Bureau of Alcohol, Tobacco and Firearms (ATF) who were involved in the incidents on February 28, 1993, we can not grant your request for interviews.

The Treasury Department's independent review (it was not an ATF report) of the ATF investigation into Vernon Howell, a.k.a. David Koresh, is thorough and complete in its evaluation of the investigation and raid. Also, the Justice Department conducted a review on the FBI's role in the events. Both of these publications are the most extensive documentation available to the public.

Thank you for your interest.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan McCarron", is written over a horizontal line.

Susan McCarron  
Chief, Public Affairs Branch (Acting)

**dick j. reavis**

---

Susan McCarron  
Chief, Public Affairs Branch  
Department of the Treasury  
Bureau of Alcohol, Tobacco, and Firearms  
Washington, D.C. 20226

Sept. 22, 1992

DEAR MS. MCCARRON:

Following this page is a copy of a letter, explaining that I'm writing a book for Simon & Schuster about the events of Feb. 28-April 19, 1993 in Waco, Texas.

Your agency found reason to believe that drugs were being manufactured at Mt. Carmel; I need to know what it knew. The source of my questions is information contained in a report of the House Subcommittee on Appropriations, concerning its hearings of June 9, 1993.

Given the above, I'd like to request copies of the following documents from you.

1. A copy of any letter or memo sent to his military superiors by Lt. Col Walker, the ATF's liaison with the Pentagon, on or about Dec. 4, 1992, concerning drug activity at Mt. Carmel. This document was mentioned by the ATF's Richard Garner during his testimony before the House Appropriations Subcommittee.

2. A copy of a fax transmission by Marc Breault to Special Agent Davy Aguilera at the ATF's Austin office, dated Dec. 16, 1992, also concerning drugs at Mt. Carmel.

3. Any information that might confirm the allegations made on ppg. 188-89 of the Subcommittee's report. I'm sending you copies ppg. 188-89. On them, I've bracketed the paragraph that makes the allegations about which I'd like more information.

The paragraph alleges that a Margaret Lawson was arrested on drug charges. I'd like to know whether or not the Margaret Lawson to which it refers was born on Nov. 25, 1917, and if not, what birthdate your information on that arrest shows.

The paragraph alleges an arrest for Brad Branch in 1983. I'd like a birth date, and a description of the charge.

It also alleges that a Marshall Keith Butler was an associate of David Koresh. I'd like to know who, according to your information, he was and how he associated with Koresh.

4. On March 27, 1993, your agency sent a letter to Texas Governor Ann Richards, explaining what it knew about drugs at Mt. Carmel. I'd like a copy of that letter as well.

Yours,

---

P.O. Box 4830 Dallas, Tx 75208 Tel. (214) 942-5659 Fax 942-5390  
e-mail: DJREAVIS@aol.com



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D C 20226

NOV 10 1994

REFER TO: D:LP:D:EAO/eao  
940442-2

Mr. Dick J. Reavis  
P.O. Box 4830  
Dallas, Texas 75208

Dear Mr. Reavis:

This is in response to your Freedom of Information Act request dated September 22, 1994, for information regarding the raid on the Branch Davidian Compound in Waco, Texas. Your request is granted in part. Each item of information that you requested is addressed individually in the order in which it was requested.

1. We do not have a copy of a letter that Col. Walker sent to his military superiors concerning drug activity at Mt. Carmel.
2. A copy of the fax transmission by Marc Breault to S/A Aguilera is enclosed.
3. Some information concerning Margaret Lawson, Brad Branch and Marshall K. Butler is enclosed. However, you should contact U.S. Customs for specific information concerning the arrest of Ms. Lawson for possession of cocaine.
4. The letter sent to Governor Ann Richards on March 27, 1993, is enclosed.
5. The correct spelling of S/A Ballesteros first name is Roland. Release of his date of birth would constitute an unwarranted invasion of his personal privacy. Consequently, we are unable to comply with this portion of your request.
6. We are unable to locate any letters written by R.L. Garner to Col. Browning concerning drug involvement at Mt. Carmel.

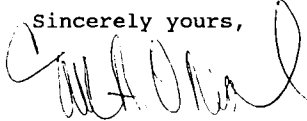
-2-

Mr. Dick J. REAVIS

The search fees associated with processing your request were not waived and your check for the full amount has been received.

Insofar as your request has been partially denied and deletions have been made, you may submit a request for an administrative appeal by following the procedures outlined on Part III of the enclosed form.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Eric A. O'Neal", written over the typed name.

Eric A. O'Neal  
Disclosure Specialist

Enclosure

## dick j. reavis

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July 21, 1994

DEAR MR. COLLINGWOOD:

As the following letter will show, I'm writing a book about the Branch Davidian affair. During the next few months, I'll several times have need of information that only your agency can provide: details about the careers of your negotiators, copies of statements made during the siege, etc. In order to save time for both me and the FBI, I'd like to ask you to designate someone to deal with my inquiries, day in, day out. I'd like to begin addressing my questions as soon as you've made a decision in this regard. Please let me hear from you as soon as possible.

Thanks for your attention.

Yours,



Dick J. Reavis



U.S. Department of Justice

Federal Bureau of Investigation

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Washington, D. C. 20535

August 10, 1994

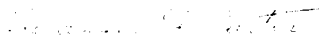
Mr. Dick J. Reavis  
Post Office Box 4830  
Dallas, Texas 75208

Dear Mr. Reavis:

This is in response to your letter dated July 21 to Mr. John E. Collingwood regarding your book on the Branch Davidian affair.

In order that we may give your request full consideration, the FBI would need a list of questions or topics. We also would need a list of FBI personnel whom you would like to interview. Please forward the lists to me at your convenience. The address is Room 7350, J. Edgar Hoover F.B.I. Building, 9th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20535.

Sincerely yours,

  
Swanson D. Carter  
Special Agent - Unit Chief  
Office of Public and  
Congressional Affairs

## Valuable FAX Message

Nov. 3, 1994

To: John Russel

From: Dick J. Reavis

This transmittal consists of 1 pages, including this cover sheet. If you do not receive all pages, please contact me at:

VOICE: (214) 942-5659 FAX: (214) 942-5390

DEAR MR. RUSSEL:

Last week I brought a very simple question to your office, and was told that I'd have to talk to you. I sent a fax explaining my question to Gina Talamona, who promised to give it to you. Perhaps there was a routine foul-up.

I need to know one thing: The Justice Department report on the Mt. Carmel events, at Page 37, says that the "Mag Bag" building was searched on March 3. Media reports, including film, date the event to March 8. Was the "Mag Bag" searched more than once, or does the report contain an editing error?

Yours,







U.S. Department of Justice

Federal Bureau of Investigation

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Washington, D. C. 20535

September 7, 1994

Mr. Dick J. Reavis  
Post Office Box 4830  
Dallas, Texas 75208

Dear Mr. Reavis:

This is in further response to your letter dated July 21 to Mr. John E. Collingwood regarding your book on the Branch Davidian affair.

I regret that pending legal matters prohibit the FBI from assisting with projects such as yours until these matters are resolved.

Sincerely yours,

A handwritten signature in cursive script, reading "Swanson D. Carter", is written over the typed name.

Swanson D. Carter  
Special Agent - Unit Chief  
Office of Public and  
Congressional Affairs



## U.S. Department of Justice

## Federal Bureau of Investigation

Washington, D.C. 20535

FEB 14 1994

M. PICKETT  
POST OFFICE BOX 4800  
DALLAS, TX 75208

Request No. 383028Subject: Vernon Wayne Harwell

Dear Requester:

This is in further reference to your Freedom of Information-Privacy Acts (FOIPA) request.

The FBI has over 200 employees assigned full time to comply with the disclosure provisions of the FOIPA. Despite this commitment, a significant increase in the number of requests received has strained our resources and resulted in a tremendous backlog of requests awaiting review. At the end of December, 1993, our total requests on hand in various stages of processing numbered over 10,000. These requests will require the review of an estimated 4.5 million pages.

In fairness to our thousands of requesters, we handle requests based on approximate order of receipt consistent with sound administrative practices. In view of the large volume of requests on hand, delays in excess of one year are not uncommon.

In order to reduce unnecessary correspondence, we will notify you only after the processing of your request has been partially or fully completed. Thank you for your anticipated patience and cooperation.

Sincerely yours,

J. Kevin O'Brien, Chief  
Freedom of Information-Privacy  
Acts Section  
Information Resources Division



## U.S. Department of Justice

## Federal Bureau of Investigation

Washington, D.C. 20535

MR DICK J REAVIS  
POST OFFICE BOX 4830  
DALLAS, TX 75208

JUN 07 1994

Request No. 381322, 380375 and 381323

Subject: Steven Eril Schneider  
Douglas Wayne Martin  
Judy Violet Peterson

Dear Requester:

This is in further reference to your Freedom of Information-Privacy Acts (FOIPA) request.

The FBI has over 200 employees assigned full time to comply with the disclosure provisions of the FOIPA. Despite this commitment, a significant increase in the number of requests received has strained our resources and resulted in a tremendous backlog of requests awaiting review. At the end of April, 1994, our total requests on hand in various stages of processing numbered over 11,400. These requests will require the review of an estimated 4.7 million pages.

In fairness to our thousands of requesters, we handle requests based on approximate order of receipt consistent with sound administrative practices. In view of the large volume of requests on hand, delays in excess of one year are not uncommon.

In order to reduce unnecessary correspondence, we will notify you only after the processing of your request has been partially or fully completed. Thank you for your anticipated patience and cooperation.

Sincerely yours,

J. Kevin O'Brien, Chief  
Freedom of Information-Privacy  
Acts Section  
Information Resources Division

## U.S. Department of Justice



Federal Bureau of Investigation

Washington, D.C. 20535

MR DICK J REAVIS  
POST OFFICE BOX 4830  
DALLAS, TX 75208

MAY 09 1994

SUBJECT OF REQUEST: Steven Emil Schneider, ET AL.

FOIPA NO: 381322

Dear Mr. Reavis:

This is in further response to your Freedom of Information/Privacy Acts (FOIPA) request(s). Information pertaining to your request has been set forth below in appropriate paragraphs.

- ☐ The additional data requested from you has been received.
- ☐ We have received your request which was referred from our \_\_\_\_\_ Office(s) to FBI Headquarters for handling.
- ☐ We are currently conducting a search of indices to our central records system files at FBI Headquarters to determine if we have the records you are seeking. Upon completion of this review, we will advise you.
- ☐ We have located documents which may pertain to your request(s), and we will assign them for processing soon.
- ☐ We have received your letter expressing your willingness to pay fees of approximately \_\_\_\_\_.
- ☐ We have received your check in the amount of \_\_\_\_\_, dated \_\_\_\_\_.
- ☒ The large number of FOIPA requests received by the FBI has caused delay in processing your request(s). The FBI has allocated substantial resources, including manpower, to insure that delays in responding to FOIPA requests are minimized. We solicit your understanding and assure you that we will process your request(s) as soon as possible.

Your continued patience will be appreciated.

- ☐ See Continuation Page for additional information.

Sincerely yours,

Chief  
Freedom of Information-Privacy Acts Section  
Information Resources Division



## U.S. Department of Justice

## Federal Bureau of Investigation

MP LICK J REAVIS  
POST OFFICE BOX 493  
DALLAS, TX 75203

Washington, D.C. 20535

DEC 22 1993

Request No. 76-12

RE: HOWELL, VERNON WAYNE ET AL.

Dear Requester:

- ☒ This acknowledges your recent Freedom of Information-Privacy Acts (FOIPA) request submitted to the FBI.
- ☐ Based on the limited information you provided, we cannot make an accurate search of our records. Please furnish your complete name, alias, date and place of birth, prior addresses, employments, and any specific data that would permit us to locate the documents you seek.
- ☐ Please submit your notarized signature. This procedure is designed to insure that documents, if located, are released only to an individual having right of access to the information.
- ☐ If you want a search of our Identification Division records for any arrest record that might pertain to you, please comply with the enclosed instructions set forth in Attorney General Order 556-73. Fingerprint impressions are needed for comparison with records in the Identification Division to insure that an individual's record is not disseminated to an unauthorized person.
- ☐ We are currently searching the indices to our central records system files at FBI Headquarters for any documents which may pertain to your request. Upon completion of this search you will be notified of the results.
- ☐ Provide the complete name, date and place of birth for the subject of your request. If subject is deceased, give date of death and any proof of death you have.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us.

Sincerely yours,

*J. Kevin O'Brien*

Chief

Freedom of Information-  
Privacy Acts Section  
Records Management Division

☐ Enclosure

The large number of FOIPA requests received by the FBI has caused delays in processing. The FBI has allocated substantial resources, including manpower, to insure that delays in responding to FOIPA requests are minimized. We solicit your patience and understanding and assure you that we will process your request(s) in due course.

Mr. ZELIFF. Mr. Wright, please proceed.

**STATEMENT OF STUART A. WRIGHT, ASSOCIATE PROFESSOR  
OF SOCIOLOGY, LAMAR UNIVERSITY**

Mr. WRIGHT. I would like to preface my remarks—am I on? I would like to preface my remarks by saying I am a lifelong Democrat. I support the Brady bill and the ban on assault weapons.

Mr. COBLE. Mr. Chairman, may I interrupt Mr. Wright just a moment? Mr. Reavis, I didn't understand what you introduced. What did you hand forward?

Mr. REAVIS. Those are letters I sent to Government agencies asking for information and their replies.

Mr. COBLE. Very well. Thank you.

Mr. WRIGHT. Having said that, I think there are some serious problems with the Federal law enforcement response at Waco.

Ladies and gentlemen, we live in a special time in history. As we edge inexorably toward the end of the 20th century, we bring closure to the second millennium since the birth of Christ. We are on the verge of a new millennium, a new age. I don't need to tell you that there is rich religious symbolism attributed to this historic event. There are an estimated 30 million Protestants—evangelicals, fundamentalists, and charismatic Christians, most of whom hold fast to the doctrine of biblical literalism and await the return of the historical Jesus of Nazareth in a cataclysmic episode referred to as the Second Coming.

Many believe this event could take place in the near future, perhaps before the year 2000. These themes are preached in pulpits all over the country on any given Sunday. One can hardly find a Baptist, Church of Christ, or Pentecostal congregation in my neck of the woods that doesn't sound this message on a regular basis.

Thousands of small churches, remote communities, safe sanctuaries of true believers far removed from the centers of power in Wall Street or Washington carry the biblical message forward. Within this sector of the population, there are hundreds of religious groups not unlike the Branch Davidians: Independent, proud, defiant, religiously devout believers who think the larger, secular world is morally bankrupt.

Historians and sociologists know that dissident millenarian and apocalyptic ideas will become more widespread in the next few years and this raises an alarming question. Could there be another Waco on the horizon?

After the conflagration of the Branch Davidians on April 19, 1993, President Clinton asked the same questions all Americans were asking; namely, why did this happen? Could this terrible tragedy have been prevented? And perhaps most importantly, what did we learn from Waco? Could this happen again?

Judging from the Government reports, media accounts, statements from officials in Justice and Treasury, the transcripts from the San Antonio trial of 11 Branch Davidians and the previous congressional hearings on Waco, I would assert that we learned very little. I would also hold out the strong possibility that we could face another Waco in the future.

Federal law enforcement, particularly the FBI, has refused to accept any blame or responsibility for the violent outcome at Mount

Carmel. Therefore, by simple extension of logic, if the Federal agencies did nothing wrong, they are not likely to correct any policies or practices in future altercations. After all, the Davidians did it to themselves, didn't they?

Let me outline a number of problems with the Government response to the Davidians and suggest why I think we could indeed have another Waco.

First of all, I have no confidence in the ATF that they would not conduct the same military-style raid under similar circumstances. Most of the criticism has not been directed at the method of entry, but rather for not abandoning the raid once the element of surprise was lost.

But the more important question is, why was such a raid necessary in the first place? Why did the ATF not seek to execute the search and arrest warrants in more peaceable means? The Treasury report indicates that faulty intelligence-gathering led to the preclusion of this alternative. The reports say they relied on the comments of a CPS social worker, Joyce Sparks, failing to corroborate what amounted to hearsay.

I don't have time for a detailed analysis of the events leading up to the raid. I would refer committee members to chapter four of my edited volume, "Armageddon in Waco," to be published by the University of Chicago Press next month. I have submitted the text of this chapter for the written record, and subcommittee staffs have been given prepublication copies of the book.

Suffice it to say that had agents served the warrants while Mr. Koresh was visiting an auto repair shop on January 29, 1993, or at a junkyard in the Waco area on February 24, it is likely that four ATF agents and 80 Branch Davidians would still be alive today, limited and overburdened Government funds would have been spent more humanely and judiciously, you and I would have never heard of the Branch Davidians, and these hearings wouldn't be necessary.

To put the matter succinctly, the enforcement actions were excessive; and this raises another point I would like to stress. The ATF garnered an exaggerated and embellished portrait of the Davidians as particularly sinister. It is important to remind ourselves that this was the largest raid in the history of the ATF. In effect, the Davidians became caricatures of evil, posing alleged threats or dangers far exceeding the actual problem.

It appears now that the agency was caught up in what social scientists call a "moral panic," undermining the agency's ability to make more sensible judgments in its plan of enforcement. There are reasons this came about; it did not develop in a vacuum.

Before, during and after the siege in the Mount Carmel community, Government officials repeatedly referred to and vilified the Davidians as a cult. Cult is a slippery and politically loaded term with little scientific validity, at least in its common usage. It typically amounts to a moral judgment, not a scientific one. In this context, it is pejorative and derogatory, invoking the worst possible stereotypes, and once affixed as a label, it seems to give justification to the most heinous discrimination.

Representatives of the U.S. Government have no business perpetuating this kind of prejudice and stereotyping. The law does not



make such distinctions, even if certain interest groups in the media do.

It is my opinion that in the development and planning of the ATF investigation, agents adopted the ideology and perspectives of anticult organizations and deprogrammers. It seems clear to me now that we can explain the excessive actions of law enforcement in terms of the fear-mongering and hate rhetoric that often characterize these groups.

I would like to recommend a moratorium on the term "cult," especially by Government officials, and I think Federal law enforcement should be more vigilant about their sources of information in the future. These are not impartial and disinterested sources. One does not approach the Ku Klux Klan to learn more about African-Americans; neither should law enforcement policies be guided by religious hate groups.

Second, I have no confidence that the FBI knows how to deal with millenarian or apocalyptic religious sects. They made a number of crucial mistakes in their operation at Mount Carmel. And again, these are clearly laid out by several contributors to my book, in particular Dr. Nancy Ammerman, who was asked by Justice to review the actions of the FBI in Waco, and Dr. James Tabor, who had an excellent grasp of Koresh's adventist theology. Professor Tabor, along with Dr. Phillip Arnold, had a key role in persuading Koresh to reconsider his exegesis or interpretation of revelation, and I am convinced that the Davidian leader was well on his way to finishing his sacred writ and making good on his promise to come out peacefully when the FBI impatiently assaulted the compound on April 19.

We now know that FBI officials never notified Attorney General Reno of the April 14 letter by Koresh stating his intentions to write down his revelation and then give up, because they had already defined him as a con man using religion as a guise for criminal activity. I read a few days ago in a Hearst news story that Byron Sage, the lead negotiator for the FBI in Waco, dismissed Koresh's promise to come out because Koresh had broken a previous promise.

But there's a lot more to this story. Subsequently, we have learned from the newly released tapes and transcripts of the negotiations that the Koresh promise wasn't broken at all. The FBI changed their demands and then disingenuously told the media that Koresh had lied and broken his promise.

Perhaps this was part of the psychological warfare to humiliate and ridicule the sect leader in hopes of breaking the bonds of loyalty among his followers. But it must be said that they did so without regard for factual accuracy, and the American public has a terribly distorted view of these events as they were conveyed by Bureau officials in press briefings.

The use of psychological warfare strategies indicates that the FBI misunderstood their adversary. This tactical approach has been used effectively on terrorist groups and drug lords; the Davidians were neither. Indeed, the FBI never knew whom they were dealing with or how to assess accurately the probable actions of the Davidians.

To make matters worse, some of the people they did consult were active in anticult organizations. I refer specifically to psychologist

Murray Miron and deprogrammer Rick Ross, prominent members of the Cult Awareness Network, whose comments distorted and confounded the problem.

Dr. Ammerman later stated in an addendum to her report that Ross was the expert having the most extensive access to and influence upon the ATF and FBI and was listened to most attentively by them.

I would exhort the committee members to please read the report submitted by the behavioral science experts, Sullivan, Cancro, Ammerman, and Stone. Their assessment is damning, pointing out incredulously that the FBI ignored religion as a viable motivating factor. On what basis do Federal law enforcement agents make such value judgments? Does the FBI regard nonmainstream religious practices or beliefs as invalid? Have they expanded their jurisdiction into matters of theology?

Equally upsetting is the fact that the FBI has refused any offers of assistance from scholarly experts on marginal or new religions. Those of us who have spent our entire careers studying sectarian religious movements have been shut out. We weren't consulted during the raid or during the standoff. And we have been rebuffed since the Waco incident, even though we have made good-faith efforts through the formation of the Religion Crisis Task Force headed by Dr. Phillip Arnold. I find this arrogance exhibited by the FBI deeply disturbing, and it only convinces me further that another Waco is possible.

A third reason to think another Waco is possible follows as a corollary to the previous point. The FBI assumedly has no response team or list of experts prepared for the next confrontation with a defiant religious sect. I'm assuming this to be the case since they have not acknowledged any errors on their part; but in truth they made critical errors in judgment.

In Waco, the FBI miscast the Davidians as hostages. The 50-person hostage rescue team, a counterterrorist unit, was called in at the outset. The standoff was classified a complex hostage barricade rescue situation. But if the FBI had understood the nature of the beast, they would have proceeded differently and realized that no one was a hostage. The Davidians sent out a videotape on March 9 showing interviews with members who asserted they did not want to leave. Even the Justice Department report conceded, in hindsight—and I'm quoting page 205 from the report—"Each person on the video, male and female, young and old, spoke in a calm, assured tone of their desire to remain inside even after the experience of the ATF raid only a few days earlier. The abiding impression is not of a bunch of lunatics, but rather a group of people who believed so strongly in Koresh that the notion of leaving the squalid compound was unthinkable."

Unfortunately, the Federal agents had no religious framework or conceptual scheme from which to understand the motivations of their captives. The idea of surrendering to, quote, proper authority, end quote, as the agents demanded would be tantamount to betrayal; assuming a Judas role.

One has to appreciate the purely religious scenario these people believed they were facing. They were principals in the Biblical tribulation, standing with God's anointed prophet. They were not about

to come cowering out in abject surrender to the Babylonians, to be paraded in chains before the unbelieving public, suffering mockery and scorn.

The Davidians lived in a separatist religious community and in their universe of discourse, a religious language was required to communicate with them. I won't belabor this point, but the FBI had at their disposal experts who could speak the Davidians' language: Drs. Arnold and Tabor. Their advice was not heeded. They will appear before you to testify later in the hearings, and they have an important story to tell. I hope you will listen to them carefully.

Subcommittee members, I implore you to use these hearings to get to the bottom of this tragedy. Ask hard, penetrating questions of those who know, but are not saying. After 2 years of research and investigation, I still have unanswered questions, and I close by leaving you with some of those questions. Perhaps you can get answers.

Why was a warrant sought in the first place since David Koresh, on learning that he was being investigated by ATF, invited the agency on July 30, 1992, through his gun dealer, Henry McMahon, to come to his residence and inspect his firearms?

Why did the ATF use armor-piercing ammunition which would easily penetrate the flimsy walls of Mount Carmel when assaulting a location known to be housing dozens of women and small children?

Why did the ATF—why did the affidavit filed by the ATF to obtain a search warrant include allegations of child abuse, a State offense over which the ATF has no legal jurisdiction?

How is it possible that a deprogrammer associated with the Cult Awareness Network, Rick Ross, an exconvict with a psychiatric record, came to be an outside expert? Who in the ATF or FBI decides who is an expert? What kind of professional criteria or credentials are considered, if any?

One of the Branch Davidian survivors I interviewed claimed that helicopters strafed the roof of the Mount Carmel building with gunfire, killing a fellow Davidian. Film footage by television newsmen on the scene indicated the helicopters arrived before the ground party. Were the helicopters firing on the Davidians, and if so, doesn't that make moot the point or the argument about who fired first on the ground?

Why did the FBI abandon good-faith negotiations with Koresh and move to psychological warfare strategy? The tactical commanders in Waco had to ignore the advice of their own behavioral scientists at Quantico. Agent Pete Smerick, who was in charge of drawing up the psychological profile of Koresh, counseled a cautious, nonconfrontational approach with Koresh in four memos written to senior FBI officials between March 3 and March 8. According to Mr. Smerick, FBI superiors pressured him to change his assessment to justify a more confrontational approach.

Was any consideration given to the effects of psychological warfare on the children of Mount Carmel? Cutting off water, electricity, blaring Tibetan chants, sounds of rabbits being slaughtered, dentist drills, shining floodlights?

Why was this strategy of tightening the noose continued and escalated even after residents responded to negotiations by sending out children? This undoubtedly induced confusion and sent mixed signals to the Davidians, a result confirmed in my interviews with them. Dr. Robert Cancro, an independent expert, later remarked that this inconsistency——

Mr. ZELIFF. I'm going to have to just let you know that your time has expired. If you can just take about 10 seconds, because we have a vote and we are going to have to move forward.

Mr. WRIGHT. Dr. Robert Cancro, an independent expert, later remarked that this inconsistency has many of the features of a double bind. Is it no wonder that confidence in the integrity of the negotiations deteriorated?

And finally, why was Attorney General Reno not informed of the April 14 letter by Koresh promising to surrender?

I think the American people deserve answers to these questions. Thank you.

Mr. ZELIFF. Thank you, Mr. Wright.

[The prepared statement of Mr. Wright follows:]

PREPARED STATEMENT OF STUART A. WRIGHT, ASSOCIATE PROFESSOR OF SOCIOLOGY,  
LAMAR UNIVERSITY

I want to thank the members and the staff of the two subcommittees for the opportunity to speak with you today on the tragic events at Mt. Carmel in 1993. I am encouraged by your willingness to reopen the investigation into Waco and I think the American people take heart because by your actions you declare a posture of openness and accountability that we highly regard in the democratic process.

Ladies and gentlemen, we live in a special time in history. As we edge inexorably toward the end of the 20th century, we bring closure to the second millenium since the birth of Christ. We are on the verge of a new millenium, a new age. I don't need to tell you that there is rich, religious symbolism attributed to this historical event. There are an estimated 30 million conservative Protestants--evangelicals, fundamentalists and charismatic Christians, most of whom hold fast to the doctrine of biblical literalism and await the return of the historical Jesus of Nazareth in a cataclysmic episode referred to as the Second Coming. Many believe this event could take place in the near future, perhaps before the year 2000. These themes are preached in pulpits all over the country on any given Sunday. One can hardly find a Baptist, Church of Christ or Pentecostal congregation in my neck of the woods that doesn't sound this message on a regular basis. Thousands of small churches, remote communities, safe sanctuaries of true believers, far removed from the centers of power in Wall Street or Washington, carry the biblical message forward for future generations. Within this sector of the population there are hundreds of religious groups not unlike the Branch Davidians; independent, proud, defiant, religiously devout believers who think the larger, secular world is morally bankrupt. Historians and sociologists know that dissident millenarian and apocalyptic ideas will become more widespread in the next few years. This raises an alarming question. Could there be another Waco on the horizon?

After the conflagration of the Branch Davidians on April 19, 1993, President Clinton asked the same questions all Americans were asking, namely, Why did this happen? Could this terrible tragedy have been prevented? And, perhaps most importantly, What did we learn from Waco? Could it happen again?

Judging from the government reports, media accounts, statements from officials in the Justice and Treasury Departments, the transcripts from the San Antonio trial of eleven Branch Davidians and the previous congressional hearings on Waco, I would assert that we learned very little. I would also hold out the strong possibility that we could face another Waco in the future. Federal law enforcement, particularly the FBI, has refused to accept any blame or responsibility for the violent outcome at Mt. Carmel. Therefore, by simple extension of logic, if the federal agencies did nothing wrong, they are not likely to correct any policies or practices in future altercations. After all, the Davidians did it to themselves, didn't they?

Let me outline a number of problems with the government response to the Davidians, and suggest why I think we could indeed have another Waco.

First of all, I have no confidence that the ATF would not conduct the same military style raid under similar circumstances. Most of the criticism has not been directed at the *method* of entry, but rather for not abandoning the raid once the element of surprise was lost. But the more important question is, Why was such a raid necessary in the first place? Why did the ATF not seek to execute the search and arrest warrants in a more peaceable means? The Treasury report indicates that faulty intelligence-gathering led to the preclusion of this alternative. The reports says they relied on the comments of a CPS social worker, Joyce Sparks, failing to corroborate what amounted to hearsay. I don't have time for a detailed analysis of the events leading up to the raid. I would refer Committee members to chapter four of my edited volume, *Armageddon in Waco*, to be published by the University of Chicago Press next month. I have submitted the text of this chapter for the written record and subcommittee staffs have been given pre-publication copies of the book. Suffice it to say that had the agents served the warrants while Mr. Koresh was visiting an auto repair shop on January 29, or at a junkyard in the Waco area on February 24, it is likely that four ATF agents and 80 Branch Davidians would still be alive today, limited and overburdened government funds would have been spent more humanely and judiciously, you and I would have never heard of the Branch Davidians, and these hearings wouldn't be necessary.

To put the matter succinctly, the enforcement actions were excessive, and this raises another point I would like to stress. The ATF garnered an exaggerated and imbellished portrait of the Davidians as particularly sinister. It is important to remind ourselves that this was the *largest raid in the history of the ATF*. In effect, the Davidians became caricatures of evil, posing alleged threats or dangers far exceeding any actual problem. It appears now that the agency was caught up in what social scientists call a "moral panic," undermining the agency's ability to make more sensible judgements in its plan of enforcement. There are reasons this came about, it did not develop in a vacuum. Before, during, and after the siege of the Mt. Carmel community, government officials repeatedly referred to and vilified the Davidians as a "cult." "Cult" is a slippery and politically loaded term, with little scientific validity, at least in its common usage. It typically amounts to a moral judgement, not a scientific one. In this context, it is pejorative and derogatory, invoking the worst possible stereotypes, and once affixed as a label, it seems to give justification for the most heinous discrimination. Representatives of the U.S. government have no business perpetuating this kind of prejudice and stereotyping. The law does not make such distinctions, even if certain interest groups and the media do. It is my opinion that in the development and planning of the ATF investigation, agents adopted the ideology and perspectives of anticult organizations and deprogrammers. It seems clear to me now that we can explain the excessive actions of law enforcement in terms of the fear-mongering and hate rhetoric that often characterize these groups. I would like to recommend a moratorium on the term cult, especially by government officials, and I think federal law enforcement should be more vigilant about their sources of information in the future. These are not impartial and disinterested sources. One does not approach the Ku Klux Klan to learn more about African-Americans. Neither should law enforcement policies be guided by religious hate groups.

Second, I have no confidence that the FBI knows how to deal with millenarian or apocalyptic religious sects. They made a number of crucial mistakes in their operation at Mt.

Carmel, and again these are clearly laid out by several contributors to my book, in particular Dr. Nancy Ammerman, who was asked by Justice to review the actions of the FBI in Waco and Dr. James Tabor, who had an excellent grasp of Koresh's Adventist theology. Professor Tabor (along with Dr. Phillip Arnold) had a key role in persuading Koresh to reconsider his exegesis or interpretation of Revelation, and I am convinced that the Davidian leader was well on his way to finishing his sacred writ and making good on his promise to come out peacefully when the FBI impatiently assaulted the compound on April 19. We now know that FBI officials never notified Attorney General Reno of the April 14 letter by Koresh stating his intentions to write down his revelation and then give-up, because they had already defined him as a "con-man" using religion as a guise for criminal activity. I read a few days ago in a Hearst news story that Byron Sage, the lead negotiator for the FBI in Waco, dismissed Koresh's promise to come out because Koresh had broken a previous promise. But there's a lot more to this story. Subsequently we have learned from the newly released tapes and transcripts of the negotiations that the Koresh promise wasn't broken at all; the FBI changed their demands and then disingenuously told the media that Koresh had lied and broken his promise. Perhaps this was part of the "psychological warfare" strategy--to humiliate and ridicule the sect leader in hopes of breaking the bonds of loyalty among his followers. But it must be said that they did so without regard for factual accuracy and the American public has a terribly distorted view of these events as they were conveyed by bureau officials in press briefings during the standoff. The use of the psychological warfare strategy also indicates that the FBI misunderstood their adversary. This tactical approach has been used effectively on terrorist groups and drug lords. But the Davidians were neither.

Indeed, the FBI never knew who they were dealing with or how to assess accurately the probable actions of the Davidians. To make matters worse, some of the people they did consult were active in anticult organizations. I refer specifically to psychologist Murray Miron and deprogrammer Rick Ross, prominent members of the Cult Awareness Network, whose comments further distorted and confounded the problem. Ammerman later stated in an addendum to her report that Ross was the expert having the most extensive access to and influence upon the ATF and FBI and was "listened to most attentively" by them. I would exhort the committee members to please read the reports submitted by the behavioral science experts, Sullivan, Cancro, Ammerman and Stone. Their assessment is damning, pointing out incredulously that the FBI ignored religion as a viable motivating factor. On what basis do federal law enforcement agents make such value judgements? Does the FBI regard non-mainstream religious practices or beliefs as invalid? Have they expanded their jurisdiction into matters of theology?

Equally upsetting is the fact that the FBI has refused any offers of assistance (seminars, educational programs) from scholarly experts on marginal or new religions. Those of whose who have spent our entire careers studying sectarian religious movements have been shut out. We weren't consulted before the raid or during the standoff, and we have been rebuffed since the Waco incident even though we have made good faith efforts through the formation of the Religion Crisis Task Force, headed by Dr. Phillip Arnold. I find this arrogance exhibited by the FBI deeply disturbing and it only convinces me further that another Waco is possible.

A third reason to think another Waco is possible follows as a corollary to the previous point. The FBI has (assumedly) no response team or list of experts prepared for the next confrontation with a defiant religious sect. I am assuming this to be the case since they have not acknowledged any strategic errors on their part. But in truth, they made critical errors in judgement. In Waco, the FBI miscast the Davidians as "hostages." The 50 person Hostage Rescue Team (HRT), a counterterrorist unit, was called in at the outset. The standoff was classified as a "Complex Hostage Barricade Rescue Situation." But if the FBI had understood the nature of the beast, they would have proceeded differently and realized that no one was a "hostage." The Davidians sent out a videotape on March 9 showing interviews with members who asserted that they did not want to leave. Even the Justice Department report conceded, in hindsight, that

Each person on the video, male and female, young and old--spoke in a calm, assured tone of their desire to remain inside, even after the experience of the ATF raid only a few days earlier... The abiding impression is not of a bunch of 'lunatics,' but rather a group of people who...believed so strongly in Koresh that the notion of leaving the squalid compound was unthinkable (p. 205).

Unfortunately, the federal agents had no religious framework or conceptual scheme from which to understand the motivations of their captives. The idea of surrendering to "proper authority," as the agents demanded, would have been tantamount to betrayal, assuming a Judas role. One has to appreciate the purely religious scenario these people believed they were facing. They were principals in the biblical Tribulation standing with God's anointed prophet. They weren't about to come cowering out, in abject surrender to the Babylonians (to use biblical metaphor), to be paraded in chains before the unbelieving public, suffering mockery and scorn. The Davidians lived in a separatist, religious community, and in their universe of discourse, a religious language was required to communicate. I won't belabor this point, but the FBI had at their disposal, experts who could speak the Davidian's language, Drs. Arnold and Tabor. Their advice was not heeded. They will appear before you to testify later in the hearings and they have an important story to tell. I hope you will listen carefully.

Finally, the remaining reason why I believe another Waco is possible is because we haven't, as yet, made the responsible parties accountable for their actions. There have been a few token sanctions and dismissals. ATF Director Higgins was forced to resign. Agents Chojnacki and Sarabyn were dismissed but subsequently reinstated. This is a curious development and it perfectly illustrates my point. On December 22, 1994, the *Houston Chronicle* reported the reinstatement of Phil Chojnacki, special agent in charge of the Houston division who supervised the raid, and Charles Sarabyn, assistant special agent. Their records were expunged and each was reassigned with full back pay and benefits as arranged through a negotiated settlement between attorneys for ATF and the agents. These actions were taken despite the Treasury Department's own report which castigated the two agents for proceeding with the raid against specific instructions from their superior (Ron Noble) to abort if the element of surprise was lost. The report states unequivocally that agent Robert Rodriguez, who covertly joined the sect as part of an intelligence-gathering operation warned agent Sarabyn through an intermediary that the raid



had been compromised only minutes before the command was given to proceed. Inexplicably, Sarabyn's reaction was to accelerate, rather than abandon, the raid. After the report was released, Treasury moved quickly to quell public criticism by initiating a disciplinary review culminating in the dismissals. ATF Deputy Director Daniel Black concluded in October 1994 that the agents (1) made gross errors in judgement (i.e., should never have carried through with the raid), (2) issued false and misleading statements to authorities, and (3) in Chojnacki's case, attempted to shift blame to subordinates. Yet, in the end, two federal officials whose "errors" are linked directly to the deaths of six people in the initial raid (and one could say indirectly to the tragic deaths of seventy-four people incinerated in the April 19 fire), walked away with their government jobs intact, their incomes and benefits secured, and their legal fees paid by ATF. Such is the legacy of Waco.

Subcommittee members, I implore you to use these hearings to get to the bottom of this tragedy; to ask hard, penetrating questions of those who know but are not saying. After two years of research and investigation, I still have unanswered questions. I close by leaving you with some of these questions,<sup>1</sup> perhaps you can get answers.

\* Why was a warrant sought in the first place, since David Koresh, on learning that he was being investigated by ATF, invited the agency on July 30, 1992, through his gun dealer Henry McMahon, to come to his residence and inspect his firearms?

\* Why did the ATF use armor-piercing ammunition, which would easily penetrate the flimsy walls of Mt. Carmel, when assaulting a location known to be housing dozens of women and small children?

\* Why did the affidavit filed by the ATF to obtain the search warrant include allegations of child abuse, a state offense over which the ATF has no legal jurisdiction?

\* How is it possible that a deprogrammer associated with the Cult Awareness Network, Rick Ross (an ex-convict with a psychiatric record), came to be an outside "expert?" Who in the ATF or FBI decides who is an expert? What kinds of professional criteria or credentials are considered, if any?

\* One of the Branch Davidian survivors I interviewed, claimed that helicopters strafed the roof of the Mt. Carmel building with gunfire, killing a fellow Davidian. Film footage by television newsmen on the scene indicate the helicopters arrived before the ground party. Were the helicopters firing on Davidians? And if so, doesn't that make moot the argument about who fired first on the ground, since the Davidians had already been fired upon?

\* Why did the FBI abandon good faith negotiations with Koresh and move to a "psychological warfare" strategy? The tactical commanders in Waco had to ignore the advice of their own behavioral scientists at Quantico. Agent Pete Smerick, who was in charge of drawing up the psychological profile of Koresh, counseled a cautious, non-confrontational approach with Koresh in four memos written to senior FBI officials between March 3 and March 8. According to Mr.

Smerick, FBI superiors pressured him to change his assessment to justify a more confrontational approach.

\* Was any consideration given to the effects of psychological warfare on the children at Mt. Carmel (cutting off water and electricity, blaring Tibetan chants, sounds of rabbits being slaughtered and dentist drills, shining flood lights)?

\* Why was this strategy of "tightening the noose" continued and escalated even after residents responded to negotiations by sending out groups of their members with their children? This undoubtedly induced confusion and sent mixed signals to the Davidians, a result confirmed in my interviews with survivors. Dr. Robert Cancro, an independent expert, later remarked that this inconsistency has "many of the features of a double bind." Is it no wonder that confidence in the integrity of the negotiations deteriorated?

\* Why wasn't Attorney General Reno informed of the April 14 letter by Koresh promising to surrender?

\* Dr. Alan Stone, professor of psychiatry and law at Harvard who served as an independent expert, wrote in his report that the advisors to Attorney General Reno significantly understated the dangerous effects of CS gas. A computer search of the medical literature showed that children who inhaled CS gas risked "fulminating chemical pneumonia and death." Why was the Attorney General not provided with this information?

\* How was the decision to expose children to CS gas, which was banned internationally for military use by the Chemical Weapons Convention in Paris in January 1993, consistent with the stated motive for the gas assault--to prevent the children at Mt. Carmel from abuse? The initial plan presented to the Attorney General by the FBI (and approved by her) called for CS gas to be continuously pumped into the Mt. Carmel settlement for 48 hours.

\* Finally, is it true that while the insertion of CS gas under the initial plan called for a mixture of carbon dioxide, which is not flammable, that a second phase of the gassing involved canisters of CS mixed with methylene chloride, which forms a flammable mixture with air?

I think the American people deserve answers to these questions. Thank you.

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1. Special thanks to Ross and Green, a Washington lobbying firm, for help in supplying some of the information for these questions

Mr. ZELIFF. And, Mr. Jahn, we will proceed when we get back. We will open up with you, but the subcommittees stand in recess until 1:15 p.m., and we will resume with Mr. Jahn's testimony.

Thank you very much.

[Whereupon, at 12:30 p.m., the subcommittees recessed, to reconvene at 1:15 p.m., the same day.]

#### AFTERNOON SESSION

Mr. ZELIFF. The subcommittees will come to order.

We will renew the panel. Mr. Jahn, if you would proceed. If the gentleman in front of you would just kind of open up and give you a path.

#### **STATEMENT OF RAY JAHN, ASSISTANT U.S. ATTORNEY, DEPARTMENT OF JUSTICE, ACCOMPANIED BY LEROY MORGAN JAHN**

Mr. JAHN. Mr. Chairman, ladies and gentlemen, my name is Ray Jahn. Appearing with me today at the table is my cocounsel and my wife, LeRoy Morgan Jahn.

Jointly, we were the prosecution or part of the prosecution effort into those who were charged in connection with the events which occurred at Mount Carmel. Between the two of us, we have 44 years of experience in investigation and prosecution of those responsible for violation of the Federal law.

We are not appearing today as management within the Department of Justice because we are not management. We're not appearing in a policy position or decisionmaking position because we are basically career prosecutors and that's our duty. We are assigned to prosecute criminal cases. We are here, though, because of being in that position we had an opportunity to review more information and interview more witnesses than probably any other single person within the Department of Justice, and in that regard we were made available, as you know, to your staff to try to correct some of the myths and misconceptions that have arisen during the course of the last 2 years.

In that regard, we appreciate the opportunity to appear here before the committee to try to gain—give to you our insight, to give to you our direction as perhaps some of the answers may lay to some of these questions that you have and to give you some of our opinion and hindsight, which of course is 20/20 and gained in background.

Some of the myths for instance that pop up you see them everywhere. Just this morning, for instance, and this is one of the things that we might want to pay attention to, Mr. Reavis suggested there was something sinister—

Mr. ZELIFF. Could you move your mike a little bit closer.

Mr. JAHN. Surely. I'm sorry. Something sinister in Davey Aguilera's failure to conduct an investigation during the period of August to November 1992. I have not spoken to Special Agent Aguilera about that and I understand he may be a witness, but based on my experience I will tell you what the answer is.

During this period of time, Mr. Aguilera works for an agency that is assigned to the Treasury Department. Those of us who are in law enforcement know that the Treasury Department, from

about midsummer until November, is tied up in the campaigns. That's their function. They borrow from Customs. They borrow from ATF. They borrow from Internal Revenue Service. They get as many special agents as they can to augment their secret service. I would be willing to surmise, and that's what it is at this point, but I would be willing to surmise that Mr. Aguilera will answer that's the reason that he could not conduct any investigation at the time.

It is not the risk, it is—the danger is that it's a basis on which someone has formed an opinion, and then based upon that opinion they start to scour the record looking for evidence that will support that opinion. And that's what I hope and I feel this panel will steer away from in this particular regard.

For instance, the other gentleman made some comment about how this was an ordinary religious movement out there at Mount Carmel. I beg to differ with you. My hair stood on end when I read the interviews of 5- and 6-year-old children that came out of Mount Carmel knowing how to commit suicide, knowing to put a gun barrel in their mouth and blow the top of their heads off. That is not your ordinary religious doctrine and that is not what we were dealing with. So that's one of the reasons I wanted to try to share with you some of our opinions that we came to over this period of time.

And the first opinion—we prepared a joint statement which I would like to ask to be submitted and made part of the record.

But our first opinion was basically that the Branch Davidians were not coming out. That was a decision that was based on an opinion that came to be held by virtually everyone as of the middle part of the April 1993.

The tragedy that's involved here actually begins back in 1992, when David Koresh makes his prediction moving his timetable initially from 1995 up to Passover 1993. In the Passover season of 1992, this is based on our witnesses' testimonies, he predicted that that was going to be the last Passover, that sometime during the year of 1992 to 1993, the confrontation with the beast, which in this regard he personified as the Government of the United States, had to occur. That was his theology. It was based upon his theology.

The followers were there. They believed in David Koresh. They believed his teachings, as every survivor who testified that Koresh meant death. They followed this particular belief. They were there to die. They were there to die. And according to Koresh, they were either going to die by bullet, they were going to die by fire, they were going to die by tank, or if they were fortunate, it would be translated to heaven without having to go through the agony of death.

But the one message that he taught, and this again was testified to by the three survivors who testified on behalf of the United States, was in order to show your worthiness to go to heaven, you had to be willing to kill. You could not die for God if you could not kill for God, and in the words of one of the survivors, there were no conscientious objectors at Mount Carmel.

We were prepared to prove, but the court excluded it for the reasons I'll tell you in a second, the existence of an instruction and a plan that David Koresh discussed with his followers and this was

what we call the McDonald's plan. And in that, he encouraged them to go out in the community in order to force a confrontation with law enforcement, to go out into the community, take over a public facility, a McDonald's, or if you recall there was an incident in Killeen involving a Lubby's cafeteria. Take over a facility. Take the people inside hostage. Hold them at gunpoint and force them to admit that David Koresh was the Lamb of God. If they refused, he encouraged and directed his followers to do so, to kill them if they refused. It was our opinion that what he was trying to do here was to force a confrontation with law enforcement authorities.

He later backed off on that. He later came back and said, well, it was just a test. And of course, if any of you are familiar with Jonestown and the actions of Jim Jones, that's what he did to condition his followers to take the poisonous suicide—cyanide was to go through these tests of it's time to commit suicide, it's time to impose these things, drink the cyanide and die.

He also during the same period of time, and you will hear from this witness, he testified to it—told an outsider who was there examining the child abuse allegations, he told her that when I reveal myself, my true identity, the riots in Los Angeles will pale by comparison. This is right after they had the major riots in Los Angeles.

We were also prepared to prove through the testimony of witnesses that even when that lady came to make her interviews, the Branch Davidians had intentionally kept away from her the small children who were David's children. They did not want to see the 15 or 16 children that ran around that were about the same age as David's children because they were afraid if she did, she would start questioning the ages of their mothers.

Indeed, one of the plans that we had in the event that we had been successful in obtaining David Koresh's arrest was to take DNA samples from him and from his children to prove that he had been having sex with minor children and then to submit that to the State so the State could prosecute him for being a child molester.

We established that David Koresh intended to have a confrontation. That's what he was after. He was going to have a confrontation sometime between Passover of 1992 and Passover of 1993 and, unfortunately, it was ATF who stumbled into that intent. Unfortunately, it was ATF who arrived on February 28 to initiate or execute a lawful search warrant and instead Koresh had 45 minutes' warning, had a notice that they were coming, and spent that 45 minutes instead of preparing to surrender or to arrange his resident counsel, because he had a lawyer inside the building with him, to arrange his surrender, he spent that time preparing, preparing to resist the agents.

There is some surmise concerning helicopters and whether or not the helicopters shot at the Davidian compound that day. We presented the testimony of Mr. Maloney. I know Mr. Reavis wasn't there during the course of the testimony and he had to go back and read Mr. Maloney's testimony. Mr. Maloney was quite clear using a map that what he was talking about was not the first intersection but he was talking about being at a location some miles behind the compound, back behind the hills. This is a very hilly area. And then beyond that, seeing the helicopters circling, and that was perfectly consistent with the testimony of the citizen soldiers of the

Texas National Guard who were flying those helicopters that day that they did some distance away, some miles away ordered—because they were trying to wait for the time factor they did not realize the raid had been moved up.

There was no testimony from any pilot or any person on board those helicopters of any gunfire, but more significantly there were videotapes that were made from those helicopters and they were delivered to defense counsel and they were played for the purpose of the jury. There is no evidence—no sound of any gunfire coming from any of these helicopters. Indeed, you could hear the bullets striking the helicopters but you can't hear the sound of any gunfire going out of those helicopters.

With this kind of mindset, it was also confirmed, the fact that there was a suicide pact within Mount Carmel. This was something that wasn't discussed that much in the press. But every survivor testified concerning that suicide pact. And basically what the design was or what the plan was was that David Koresh thought he was dying. He thought that wound that he received on February 28 was so severe that he was going to die and when he died his followers were going to come with him.

When he died they were going to put his body on a stretcher. They were going to come outside with their women and their children, the mighty men, the men that were loyal to him were going to be carrying his children. They were going to have guns and handgrenades concealed. They were going to pull those guns and grenades and open fire on the FBI, thereby forcing the FBI to fire back. A suicide by cop, that's exactly what it was. Trying to force the FBI in front of the world press to be humiliated, to be criticized for shooting women and children and shooting people that were there at Mount Carmel.

And then if that failed, they were going to kill themselves. They even went around selecting their friends as to who was going to be the person that was going to kill you. They went around and rehearsed how they would do it. This again is based upon the testimony. They went around and rehearsed how to do it. How many people can die on a handgrenade? Shall we have three of us or shall we have four of us standing around when the handgrenade is pulled? Who's going to pull the pin? That was the degree of rehearsal.

It got to the point where they finally even got down to say good-bye to each another. They gathered in the cafeteria on about March 2 or 3. They had religious services to the extent they had. They sang songs. David all of a sudden sent out messages he was feeling better and that's when the message came that God said to wait.

Now, no witness testified that God told him that he was going to surrender. All he told them to do was wait. There was never any testimony that David Koresh intended to surrender. Likewise, during the 51 days of the siege, there was never any indication that David Koresh was going to surrender. There were more negotiations, hundreds of hours of negotiation tapes, all of which have been released to the public. There were hundreds of hours of title III, and I understand now that the Department of Justice has obtained, finally obtained a court order that permits those to be re-

leased to the public. Those indicate that there was no intention to surrender.

The only people who came out of Mount Carmel during the 51 days were people that David Koresh sent out, he selected for various reasons to go out. For example, Kathy Schroeder, the lady who made a deal with us and testified on our behalf, she was sent out because she was a sinner. When David Koresh was weak, she had smoked cigarettes. She had drunk alcohol. And when he got his powers back and when he recovered his powers, he became incensed over that. He called her in and he told her—he had already sent her children out and they were going to stay in the world and not go to heaven. And he told her, you have been such a sinner that you are going to interfere with my chances to—to get my followers into heaven and so therefore I'm going to send you out and you're going to stay here while I die. And then once I die, then I will come back and get you. But because of that, because I can't risk your sin jeopardizing my mission, I'm going to send you out.

That's the reason that the negotiators, no matter what they thought, never could understand why they couldn't get more. And the reason they couldn't get more is that any time they got something, it was because David Koresh decided they were going to give them to him.

The Branch Davidians started the fire. We proved so conclusively that the Branch Davidians started the fire that two, at least two defense counsel conceded it during closing argument. We proved it through the direct testimony of experts. We proved it through a multiple type of experts: Fire marshals from all over the Nation that did an investigation; a Ph.D. professor who you will hear from—watch his tape, it's a great tape—who came up with a fire analysis. We proved it through the scientific evidence showing the scattering of fuel throughout the compound. We proved it through the title III's. They were the ones that were heard on "Nightline" the other day.

Mr. Reavis, I think, describes him as being murky. I'll be truthful to you. I heard it the first time I listened to it. If you didn't hear it, go back and listen to "Nightline" again. You can hear the instructions even through the gas mask, even though it was too difficult to hear on April 19. When you go back now and listen to it, you can hear the instructions. You can hear, "Spread the fuel. Have we spread the fuel yet? Have we saved some?"

You can also hear some of the passages where they say we set the fires when the tanks come in. This was the type of evidence and the degree of evidence that we used to affirm or to prove those particular matters.

And, last, of course, it was confirmed by the presence of the forward looking infrared camera that was located on the plane above. This is another area where we have myths that grow. One of the myths is, well, the FBI must have known there would be a fire or else they wouldn't have put that camera up there. This operation started in the dark. This operation started before sunrise. That camera was up every night during the 51 days. It would circle. It would make those photographs. It would follow that particular area.

And they were trained observers. What better choice of the FBI than to leave that camera up there, even though it did go into the daylight? Not because they thought a fire was going to start, but merely because they wanted the extra set of eyes that were up above.

What about the still pictures that were taken from the plane up above? Take a look at those. Examine them. It shows where the tanks were. It shows how far they went inside. One of Mr. Reavis' suggestions is that the boom operator, the tank operator went in and knocked against that bunker that you see on the later portions and knocked down some stones and killed the people inside. Outrageous. The boom operator—it completely ignores the testimony of the operator, a Marine Corps veteran who was trained in the Marine Corps to operate this very vehicle who very carefully goes inside and never goes through.

Look at the floor plan even in Mr. Reavis' book. There is a room, a hall, a room, and then the bunker. Never goes past that very first room. Never penetrates beyond that first room in order to inject the tear gas in there and to open up the various sides of the wall

And one thing you need to remember on that, too. The testimony of all the survivors that came out, all but two, two did not, but all but two of those survivors came out through holes that had been made in the walls by the FBI tanks. Two came out windows, but the rest of them came out through those holes. That was part of the reasoning behind it. There was testimony as to what the reasoning was, why that operator used his skill to go in there and open up that particular area. And it was to open up the area. It was to provide an escape route.

This is the kind of myth that we're concerned about and that is the kind of myth that LeRoy and I would like to be here. We also established, for instance, that the survivors that came out, their clothes smelled of accelerants. They smelled of diesel fuel. They smelled of lantern fuel. They smelled of lighter fluid. And the laboratory later came back and confirmed that they had done it.

There was some more suggestion or surmise that there is some sinister purpose of the tank coming down near where the bunker is. If you will see some later film, there's a picture of the tank down there with its blade out. That ignores again the testimony of the operator who testifies concerning why he was there and what he was there for. He knew that he was in danger. He knew that if that building fell over on him——

Mr. ZELIFF. Mr. Jahn.

Mr. JAHN. Yes, sir.

Mr. ZELIFF. Your time is expired. If you could kind of wrap up.

Mr. JAHN. I'm sorry, Your Honor—I'm sorry. Mr. Chairman, I didn't realize that.

We submitted our other matters in there, and I think the most important thing to remember is that LeRoy and I, to the extent that we can speak for anyone, speak for the hundreds of law enforcement persons—State, local, and national—whose lives have been affected by this matter who are not the beast. They are not out to—they are not out to inflict any damage. They are not out to injure anyone. They're your brothers and your sisters and your



mothers and your fathers and your sons and your daughters and let's not forget that during this.

Mr. ZELIFF. Thank you, Mr. Jahn. Thank you very much.

[The prepared statement of Mr. Jahn follows:]

PREPARED STATEMENT OF RAY JAHN, ASSISTANT U.S. ATTORNEY, DEPARTMENT OF JUSTICE

My name is Ray Jahn and with me today is my wife and co-counsel, LeRoy Morgan Jahn. We are Assistant United States Attorneys and between us have 44 years experience in investigating and prosecuting crimes committed against the United States. LeRoy has served under eight Attorneys General, and I have served under twelve.

LeRoy was assigned to the Branch Davidian matter on March 2, 1993, by the United States Attorney and went to Waco about that time. I was appointed to head the prosecution effort on April 1, 1993, and joined the team in Waco then. Neither of us are in management at the Department of Justice; nor do we hold any policy or decision making authority. Rather, we are career prosecutors whose responsibility it was to represent the United States of America in the criminal case of United States v. Brad Branch, et al.

We are here, today, because more than anyone else involved with the case, we had the opportunity to review all of the investigative reports and materials and to speak with the vast majority of witnesses. As you know, we met recently with your staff for more than five hours to dispel some of the myths surrounding the Branch Davidian matter. We are available today to continue to assist in your search for the truth and appreciate the opportunity you have given us to address you and the American people.

It is clear that, at this juncture, any opinion expressed about Waco is the result of hindsight and Monday-morning-quarterbacking, but given that indulgence, LeRoy and I have drawn some lessons from these events which we would like to share with you.

**1. THE BRANCH DAVIDIANS WERE NOT COMING OUT.**

This tragic affair commenced in 1992, when David Koresh predicted that the Passover the Branch Davidians were then celebrating was to be their last Passover before the violent confrontation with the United States Government -- which was the foundation of his theology -

- occurred. All the surviving Branch Davidians who testified at the trial stated that when Koresh changed his name from Vernon Howell, he taught them that Koresh meant "Death." His was an apocalyptic theology, and those Branch Davidians who remained at Mt. Carmel, "the members of the Message," as they phrased it, believed that they were at Mt. Carmel to die and be "translated" to Heaven. Indeed some of them had returned to Mt. Carmel for just that purpose, when they were informed that the end was coming before Passover of 1993.

The prophecy Koresh taught was that the "members of the Message" were to die by bullet, tank, fire or direct "translation" to heaven; however, in order to reach heaven, they had to prove that they were worthy by resisting or fighting the "Beast" -- identified as all those outside the message, but personified by the Government of the United States. They all believed Koresh's teachings that in order to die for their God, they had to be able to kill for that God. When asked if there were any "conscientious objectors" at Mt. Carmel, one survivor said, "No."

The United States was prepared to prove at trial that Koresh developed a plan for his followers to go into the community around Waco, Texas, to a public restaurant, confront its patrons, and kill those who would not accept Koresh as the Lamb of God, in order to provoke the promised confrontation. Additional proof was ready to be offered that Koresh had told an outsider, shortly after Passover of 1992, that future events at Mt. Carmel would eclipse the Los Angeles riots in 1992, which would pale by comparison. This evidence was found to be overly prejudicial by the trial court because, of course, Koresh was not on trial, and we were not permitted to offer it during the trial. The facts, however remain, and it is our belief that this evidence establishes that if the ATF had not appeared when it did, Koresh would have forced some confrontation with some governmental authority, resulting in a threat to innocent people.

Instead, on February 28, 1993, when the ATF agents arrived at Mt. Carmel, Koresh, who had 45 minutes advance warning, that they were coming, chose to create the confrontation at his front door by firing at the agents, killing four, and wounding many others, rather than surrendering. The evidence at trial established that the Davidians, not ATF, shot first -- a fact confirmed by three members of the press who were present at the compound on that day.

Because of this mind set and what was learned from the negotiations and other investigation conducted during the 51 day siege, it was clear that Koresh had no intention of surrendering voluntarily. The evidence at the trial from every survivor who testified was that Koresh and his followers were not coming out to surrender. Each survivor testified that a suicide plan was hatched early in the siege because Koresh believed he was dying from his wound.

The plan was for Koresh's followers, after his death, to represent that they were "surrendering;" conceal weapons in their clothing and the clothing of Koresh's children; come out with Koresh's body; and in front of the gathered world-wide press, open fire upon the FBI to force the agents to fire back at them. Should that fail, the Davidians on the outside were to take their own lives or murder each other while those remaining in the compound would do the same. To this end, they rehearsed their own deaths by determining how many could be killed with each of their hand grenades and developed plans so that, should courage fail, some other member would shoot them. This plan was delayed when Koresh improved and he instructed his followers to wait because he had been so instructed by God. However, the intention to persevere in the compound until death always remained the same until that end came on April 19th.

Nothing occurred in the remaining 51 days of the siege to change this resolution. The ploy of waiting to surrender until Koresh had written the "Seven Seals", like the release of some of the children that were not his biological children, still appears to have been nothing more than a delaying tactic, and an effort to gain more publicity. One Branch Davidian who testified reported that those people who left the compound during the siege did so only because Koresh instructed them to do so. She, for example, was expelled for smoking cigarettes and drinking alcohol while Koresh was incapacitated. When she protested being sent out of the compound, Koresh explained that if she -- a sinner -- remained inside, he might not be able to get the remaining followers into heaven and that would mean that all his efforts on earth had been wasted. By early in April, the negotiations were no longer effective because Koresh had surrendered all those that he would.

## **2. THE BRANCH DAVIDIANS STARTED THE FIRE:**

The extent to which it was conclusively established at trial that the Davidians started the fire is best illustrated by the fact that several defense lawyers, in closing argument, conceded the fact. Testimony by a member of the arson investigation team -- a team comprised of four experienced fire investigators from Fire Departments across the United States; the head of the independent laboratory used to determine the presence of accelerant throughout the compound; and an expert in fire analysis established that the fire was deliberately set in at least three, if not four, locations within the compound at about the same time.

This was confirmed by the video tape produced by the Forward Looking Infrared camera mounted on a fixed wing aircraft that was deployed above the compound, still photographs, and the conversations of the Davidians intercepted through electronic surveillance regarding

spreading the fuel and keeping the fires burning. Additionally, eye witness testimony of an FBI agent and a Branch Davidian survivor identified the fire-starters as being within the compound. Finally, the clothing of several of the surviving Davidians smelled of accelerant, which was confirmed to be on the clothes by the laboratory, and many empty cans of Coleman lantern fuel were found in the remains of the fire.

To suggest that the deaths of any Davidians can be attributed to the action of the law enforcement officers on the premises on April 19th is to distort or ignore the facts. The testimony at trial, establishes that when the armored vehicles approached the compound building during the fire, their occupants were engaged in rescue attempts -- such as pulling Ruth Riddle from the flames and coaxing Renos Avraam from the roof; the administration of first aid -- as in the case of Marjorie Thomas and Misty Ferguson; or clearing debris that might impede escape or endanger any Davidians who may have made it to the relative safety of the underground areas.

Let me dispel two other myths: First, rather than impeding escape, the holes made in the building by the Construction Engineering Vehicles (CEVs) that delivered the CS gas created the openings used by all but two of the Davidians who escaped from the fire. Second, the CEV that penetrated the front wall to deliver gas did not impact the walk-in storage room that later became known as the "bunker." That room is located against the back wall of the compound and is separated from the front wall by a room, a hallway and another room. The CEV operator of this vehicle testified at trial that he penetrated into the first room but his boom did not advance into the hallway or the room that separated the hallway from the bunker. Thus the

allegation that any Branch Davidian was killed on April 19th by a law enforcement officer ignores the facts.

### 3. MISTAKES WERE MADE:

Were there mistakes made at Waco? Yes. Every enterprise that entails human effort and the exercise of human judgment has the built-in capacity and probability for human error. The larger the effort, the more likely mistakes will be made, and in hindsight, they can be identified and corrected and serve as learning tools. The Departments of Justice and Treasury have proven that they desire to accept and learn from such mistakes as is evident from the after-action reports that have been prepared and released.

An example of a problem area that came to light during the siege at Waco was the division between the tactical forces, who were trying to contain the situation; the negotiators, who spent hundreds of hours trying to talk the Davidians into coming out; and those who were investigating the murders of the agents. Each unit had its own goal which was important to the overall result: to end the siege, to obtain a peaceful surrender, and to gather evidence; but the goal of one, at times, conflicted with the needs of one or both of the others. The solution to the problem was better communications, a subject which I addressed in early April and which I am advised has now been emphasized in FBI/DOJ training and in the FBI's reorganization of its crisis management team.

Turning to our major mistake as a law enforcement presence at Waco, our primary failure was that we did not fully realize that the Davidians were zealots in every sense of the word. In hindsight, had this been recognized it may have resulted in different courses of action

but, based on what we now know, it is highly unlikely that it would have led to a different result.

Anyone can spend hours speculating on alternate timetables or courses of action. For example, a recently published criticism of the timing of the insertion of CS gas discusses the prospect of cutting off the water supply by firing at the storage tanks, as if this had never been considered. That assumption is totally false. I raised that issue when I first arrived at Waco and discovered that it had been vigorously debated and rejected by both the Hostage Rescue Team (HRT) and the negotiators. The negotiators were against it because it was an act of violence and would validate the paranoia inside the compound. The HRT was against it because it would endanger the occupants of the compound since they could not fire at the storage tanks without the compound being in the line of fire.

Even so, when April 19th approached, the Attorney General reopened the issue and directed that a complete reexamination of the water status be done, even calling me on the telephone to discuss it. Again the same conclusion was reached for the same reasons -- it was too risky to the occupants to fire upon the water tanks.

Likewise, it is my understanding that many other alternatives to the insertion of CS gas were discussed each containing its set of advantages and disadvantages until a decision was made that only three choices were left: to do nothing and watch the conditions deteriorate; to launch a full blown attack on the compound; or to use the gas. It was decided that use of the CS gas was the most reasonable action -- a decision which will be discussed fully in these hearings by those who were faced with this difficult situation.

**4. THERE WAS AND IS NO GRAND CONSPIRACY.**



To the extent that LeRoy and I speak for any group in this hearing, we would like to think that we speak for the hundreds of law enforcement personnel, Local, State, and Federal, men and women, whose lives have been affected by the events at Mt. Carmel, and who now find themselves labeled by some as "jack-booted thugs," and allegedly, feared by those that they seek to protect. The law enforcement personnel who went to Mt. Carmel -- be they from the Texas Department of Public Safety, the ATF or the FBI -- went there to address and peacefully resolve a threat, execute a lawful court order, supported by ample probable cause and never found defective by any court, and bring the entire matter into our system of justice.

They were brothers and sisters, husbands and wives, mothers and fathers, and sons and daughters; they were little league coaches, band chaperons, scout leaders and members of the family that sits in the next pew at Church. On the 28th of February, two of the ATF agents were newlyweds; several of the ATF agents had candies in their pockets for the children; and many never fired a single shot, even though, once all the evidence was recovered from the compound, it became abundantly clear that the Branch Davidians had possessed a massive arsenal of assault weapons, illegal explosives, and illegal machine guns, as originally alleged in the ATF search and arrest warrants. On the 19th of April, though repeatedly fired upon by the occupants of Mt. Carmel, the FBI did not fire a shot, other than the non-lethal ferret rounds which carried the CS gas.

Every law enforcement plan -- whether that of ATF, FBI or Texas Rangers -- that was developed in response to the situation at Mt. Carmel was directed toward success -- which was defined as the peaceful resolution of the conflict, the protection of the children, and bringing any criminal actor to justice in a court of law.

However, one group at Mt. Carmel always had the ability to resolve the conflict peaceably: the Branch Davidians. On the 28th of February, had David Koresh surrendered to the agents, the result might have been that he and a few others would have been tried, convicted, and jailed, but all -- every agent and Davidian, adult and child -- would be alive today. Had they surrendered at any time during the 51 day siege, no Davidians would have perished in the tragic fire of April 19.

Mr. ZELIFF. We have a problem here. You have been hearing some bells. We have two votes pending, maybe three. And the process means that one will be for 15 minutes, which we are going to immediately move out to do. There may be two 5-minute votes after that.

The procedure is that we will recess until 5 minutes after that series of votes, so if you would be patient, I would appreciate that. We look forward to asking all the panels their questions after the recess. Thank you. We will recess until 5 minutes after these series of votes.

[Recess.]

Mr. ZELIFF. The subcommittees, please come to order.

The procedure that we're going to use here for questions, that the subcommittee and committee Chairs and ranking minority members will each have 5 minutes to ask questions. And the Chair will begin.

Mr. Reavis, did I pronounce that right? Is it "R-e-v-i-s" or "R-e-a-v-i-s"?

Mr. REAVIS. "R-e-a-v-i-s."

Mr. ZELIFF. "R-e-a-v-i-s."

Let me just ask you, you've been researching this project since 1993, 2 years. And what do you believe—and this is a real easy one, but just in 30 seconds or less, what would you believe is the most important thing we can do in these hearings to—that would come out of all these hearings?

Mr. REAVIS. I think the most important thing would be if you could declassify or give to the public and the press all of the documents that we haven't been able to get at. For example, all of the raiders gave statements to the Texas Rangers. The Federal prosecution has those statements; nobody will turn them loose.

Mr. ZELIFF. I have to admit we've had some trouble also.

Mr. REAVIS. I understand you all have. So first of all would be the documents that exist, they shouldn't be kept secret. It's been 2 years, there's no longer any good reason for that.

Mr. ZELIFF. Thank you.

Mr. Jahn, just a couple questions. When you were prosecuting the surviving Davidians, am I correct that in addition to what you have already testified to, that you charged 11 of them with murder?

Mr. JAHN. That's correct.

Mr. ZELIFF. And 11 with aiding and abetting murder?

Mr. JAHN. Conspiracy to murder, and then the actual aiding and abetting murder itself.

Mr. ZELIFF. And 10 were using or carrying a firearm in the commission of a violent crime?

Mr. JAHN. I'm going to accept your word on that, Mr. Chairman. I don't remember the exact number on that. Approximately so, yes, sir.

Mr. ZELIFF. Isn't it true that the Davidians stated they were acting in self-defense?

Mr. JAHN. That was a charge that was given to the jury, but there was no evidence to support that charge. There was no evidence that they were afraid of ATF as far as being physically afraid that a particular ATF was going to fire at them or anything like

that. The court bent over backward and gave them a self-defense charge.

Mr. ZELIFF. But they basically were acting in self-defense?

Mr. JAHN. It was one of their defense claims, yes, sir.

Mr. ZELIFF. Is it true that no Davidian was convicted on the accounts mentioned?

Mr. JAHN. On the murder and the conspiracy to murder, that's correct.

Mr. ZELIFF. Thank you very much.

I wanted just to ask you, during the days immediately after the ATF raid, a shooting review is conducted which involved asking questions of all ATF agents involved, and at some point, that review turns into questions that could produce information that is helpful to understand exactly what happened. The Texas Rangers state—and I'll refer you to Treasury Bates No. 14137—that you, Mr. Jahn, wanted the review cut off. I guess my question is, why would you of all people want to cut off a process that was designed to get at the truth?

Mr. JAHN. I think that was a mistake, Mr. Chairman. I didn't come on board until April 1. And it's my understanding that there was a decision made to stop the Treasury review and let the Rangers do all the—all the investigation and gather their information. But I think that was a mistake on the report, because I had no—no one consulted me about cutting off a Treasury review. So I think it might have been a mistake.

Now, perhaps they talked to the U.S. attorney who was on the case prior to April the 1st.

Mr. ZELIFF. Do you think any—do you have any knowledge of any other Federal prosecutors cutting that off?

Mr. JAHN. Not direct knowledge, no. As I say, perhaps they talked to Mr. Edder. That's the only thing I can think of.

Mr. ZELIFF. OK. Let me move on to another question. Let's see. We find a set—we had thousands and thousands of pieces of paper to go through and much of it was very, well, very unorganized. We found a set of handwritten notes that looks to me to be from someone at the Treasury Department; they read as follows:

1:20 p.m., per Tony, Ray Jahn advises us to tell Ron Noble not to open the envelope from Houston Chronicle. Contents are from illegal intercept. Lock in safe and keep. DOJ researching possible violation by paper for printing and distributing.

I couldn't help but be intrigued by what this Waco-related note means. Could you shed some light on what was in this mysterious envelope and why Ron Noble could not open it and why was it being locked in the safe?

Mr. JAHN. Yes, sir. We subpoenaed and obtained from Mr. Mulloney, the TV cameraman, or actually I believe it was the other one, his total tape. On his total tape, they had a scanner that was scanning cellular phones, which is probably illegal interception of those cellular phone telephone conversations. If we had permitted that to be circulated around, that would have been, in itself, illegal in terms of spreading it around, even letting Mr. Noble listen to what his agents were monitored saying.

That, in itself, would be illegal. So we stopped the spreading until we could edit out those portions of the illegally seized cellular phones. That investigation was referred to Justice, and I don't

know what they ever did in terms of whether or not that constituted an illegal wiretap by the press or not. I don't know what the final outcome of that was.

Mr. ZELIFF. If—this is the last one, just a quick one.

If you knew all the bad things about David Koresh, why wasn't—why didn't you arrest him in town?

Mr. JAHN. Well, I wasn't there, I didn't come on until April 1. I think what you need to do is address that question to Mr. Aguilera, who's going to be here, Mr. Johnston, who will. There's no obligation—once the warrant is issued, there's really no obligation to do it. It's a matter of judgment, and we're willing to admit there were some mistakes made in judgment in this particular matter.

Mr. ZELIFF. OK. Thank you very much.

I'd like—the Chair now yields to my friend, Karen Thurman, ranking minority member from Florida.

Mrs. THURMAN. Good afternoon. Mr. Reavis, you keep talking about these documents. Can you give me a better sense, since you'd like us to ask a question on this, of what it is and what documents you're still looking for? I saw your interview on TV the other morning that had suggested that now, since then, you've gotten the tapes. I guess since the trials you were given tapes from the FBI. What other documents is it that you're still requiring?

Mr. REAVIS. OK. The tapes, as you call them, I got transcripts of those tapes; and I got them through a process that I think was irregular. An attorney named Joe Turner, who had gotten them for discovery, gave them to me. No one has yet been able to get a copy of those from the FBI through the Freedom of Information Act, though about 2 weeks ago, the FBI put a set in its Washington office, and you can go in during working hours and look at them. So they've been declassified to the Washington, DC, press, which doesn't help us a lot in Dallas.

But, in particular, the documents I just mentioned were these.

After the February 28 raid, the Texas Rangers interviewed all of the raiders, took a statement from each of them, typed it up; and we have only seen about 20 of these statements, from those raiders who the prosecution thought it might call as witnesses in the trial. I tried to get the other 60 statements, for example, from the Texas Rangers. They told me I'd have to sue to get them.

Let me think what else is still—

Mrs. THURMAN. Could there be a reason why? Maybe Mr. Jahn, as a counselor—I, like you, am not an attorney.

Mr. REAVIS. I can tell you the reasons they've given me. They say that there's a lawsuit, and that they don't want to complicate that litigation. And my assessment of that is that if the owner of the Watergate building had sued Richard Nixon and we would have let him say, gee, there's a lawsuit, he can't give you any documents, history would be much different than it is today.

Mrs. THURMAN. Mr. Jahn, would you like to respond to that?

Mr. JAHN. Yes, ma'am.

I know there's a billion dollars' worth of lawsuits filed against the United States. And there are exceptions under the Freedom of Information Act, exceptions that are granted by this Congress to exclude the discovery of those items that would compromise litiga-

tion, pending litigation. That's the reason, until the criminal trial was over, there was virtually no discovery whatsoever.

Since that time, I know Ms. Reno has given instructions to make as much as possible—but again because of the physical limitations on manpower and duplication and copying and everything, there's a big backlog on FOIA requests. I was told that this normal—this delay which he's meeting is just a normal delay because of all the other people who have come in ahead of him, filing their requests, and they have to be processed. You take out informants' names, you take out the names of people that were promised confidentiality, you take out privileged sources, and then you turn it over at the end. It's just a normal process.

There's no effort to conceal anything. In fact, Mr. Reavis, if he had called me and asked me some information—he prints in there that I was involved in the decisionmaking to inject the teargas; that's totally false. If he had given me the courtesy of calling me, I would have told him, no, sir, I wasn't involved in the decision-making to inject the teargas. So it's not a question of trying to hide something. It's simply a question that we operate under the rules that Congress imposes on us.

Mrs. THURMAN. I can tell you during the crime bill, everybody in the world wanted a copy of the crime bill. We couldn't get it to everybody either, so we kept having problems.

Mr. Reavis, on page 14 of your book you talk about the fact that the main premise of your book is that the press did not investigate the events at Waco and that only you really understand these events. Could you describe for us how your findings differ from the rest of the reports or the reporters who have covered this story?

Mr. REAVIS. First of all, I want to say thanks for reading my book.

Mrs. THURMAN. You're welcome.

Mr. REAVIS. Always glad to meet someone who does.

Mrs. THURMAN. It's my job.

Mr. REAVIS. What happened to the press during that time—and I think most of its members will admit this to you now—is that their budgets got spent during the 51 days. The search warrant, for example, was sealed for most if not all of that period. So the press couldn't even find out what it was that David Koresh was supposed to have done. It had to take the word of spokesmen for it.

After those 51 days were over, I went down and, for example, ran into the transcripts of all the telephone calls from Mount Carmel to the FBI. And for a year I had those, and I told people I had them, and nobody wanted them.

The biggest surprise I encountered in writing this book is that I had no competitors. And, naturally, my conclusions differ or my questions differ, because I learned a lot more than they did because they abandoned the story when the building burned down.

Now, of course, there were some who didn't abandon quite as quickly as others, but in general this represents a major failure of the press in our country.

Mrs. THURMAN. Mr. Jahn, another question that has been surrounding this has been about whether Koresh was having sex with girls as young as 12 and 13 years old. What evidence is there that Koresh was having sex with children?

Mr. JAHN. We were ready to present testimony of, for instance, the midwife who had given birth to some of the—some of the young girls. We felt so strongly that—like I say, it was our plan to take his DNA upon leaving the compound and take the DNA of the children and prove it up, which is basically even—I've even heard Catherine Matteson, one of the ladies that was mentioned, a survivor that came out, she was interviewed in the Waco paper, and she admitted one of the girls was 14 years old when she gave birth to one of David's children. So it was a kind of a secret, but it wasn't a very closely held secret from within, within the members of the message.

Mrs. THURMAN. Thank you.

Mr. ZELIFF. The Chair now recognizes Chairman McCollum of Florida.

Mr. MCCOLLUM. Well, thank you very much, Mr. Chairman.

Mr. Jahn, I want to ask a question of you, first with regard to the trial itself in terms of testimony. Was there any testimony at the trial about ATF officers carrying firearms while they were in helicopters on the day of the raid?

Mr. JAHN. Yes, that they were carrying firearms and they had been cleared, that the rules were that they could not have a round in the chamber and that was the rule that the pilots operated under as they flew toward the area.

Mr. MCCOLLUM. What was Kathy's testimony at trial relevant to the helicopters and firearms?

Mr. JAHN. She was on the front side of the building; she didn't have any personal knowledge, any direct knowledge.

Mr. MCCOLLUM. That was her testimony at the trial itself?

Mr. JAHN. Yes. Well, that's my—if she was even asked, that would have been her answer. I can't remember now whether she was even asked, because she was—she was at the front side of the building during the whole time of the transaction.

Mr. MCCOLLUM. OK. Well, we just have a lot of conflicting testimony about helicopters, as you know, and I wanted to find out what had come out at the trial.

Mr. Reavis, you have stated in your book, and in a couple of comments that you made here, quite a bit about the aftermath of the siege—I should say "aftermath" of the February 28 siege—and the fire itself. You didn't get to testify much about that today. Mr. Jahn made a big point, as I gathered from his testimony, that there was a lot of planning going on and that David Koresh never intended to surrender. As I recall, you got some indication that David Koresh would have surrendered right along.

I'm sure you sat there with me listening to Mr. Jahn's testimony, and I wondered if you could respond to us what your investigation unearthed and why, if you do disagree with Mr. Jahn on that point, why you disagree.

Mr. REAVIS. Mr. Jahn said this morning that there was never any testimony about Koresh planning to surrender and nothing in the tapes or transcripts.

In the transcripts on the 14th, 15th, 16th, and 17th of April, the 18th as well, there's discussion between Steve Schneider, David Koresh and several FBI negotiators, in which David says, As soon as I get the seals written, I'm coming out.

This was a big decision for him, incidentally, because he believed his doctrine should never be written down until April 14. And the FBI negotiators say at one point, Can we go to the bank with that? And Koresh says, Yes, you can.

And in another point, they say, Well, will you send us the seals out as you finish them? And he says, Yes.

My interpretation of those transcripts is that Koresh thought he had an agreement to surrender when he was finished writing those documents.

Mr. MCCOLLUM. Well, now, the other side of that coin is the impression being given maybe that Koresh was just simply lying all along, that he was just playing people along outside. I hear that throughout some of this hearing from the ATF side and the FBI side. Is that not your impression?

Mr. REAVIS. You know, when a man is dead, we can convict him of anything and accuse him of anything. David—I believe that David was being honest because always before he had said, My message cannot be written, God does not want it written, the Bible's already written and that's all we need. All of a sudden at the end of Passover, on April 14, he decided that he had to write his message.

I think he was persuaded by Tabor and Arnold, two theologians, but we can't know. We can know that he said that; we can't know now what would have happened, because we didn't wait to find out.

Mr. MCCOLLUM. Would you care to give us your criticism, if there is any, of the final day of the fire? You said you didn't have time to give that, and what led up to it?

Mr. REAVIS. I think the best information on this point, and it supports what I say in my book, is that the methylene chloride that was injected into Mount Carmel with the ferret round, rounds, that its vapors are flammable. There's a long article in the Sunday issue of the Los Angeles Times by Glenn Bunning that has more expert information than my book had. It establishes, methylene chloride is dangerous; you should not throw it inside of buildings, its manufacturer says.

Mr. MCCOLLUM. What about "come along," you had an agent come along? You said that after he had his little period of time that things really changed when the FBI took over the negotiations. Can you tell us about that?

Mr. REAVIS. His name was Jim Cavanaugh. I can now say that; I'm away from Simon and Schuster's lawyers.

Mr. MCCOLLUM. All right.

Mr. REAVIS. I think he did a good job, and Koresh and Schneider were greatly displeased when he was pulled off. He did a good job because he let them lecture him on theology, and they thought they were making a convert out of him.

Mr. MCCOLLUM. And after he was pulled off?

Mr. REAVIS. They threw a fit because they felt he had been pulled because he had listened to them.

Mr. MCCOLLUM. And during the time he was on, quite a few people were let out; is that right?

Mr. REAVIS. That's right.

Mr. MCCOLLUM. Thank you very much.

Thank you, Mr. Chairman.



Mr. ZELIFF. Thank you.

The Chair now recognizes the ranking minority member from New York, Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

First, Mr. Jahn, have you read Mr. Reavis' book?

Mr. JAHN. No, I'm sorry, I've not. I read excerpts of it and portions of it, but not the whole book.

Mr. SCHUMER. From the excerpts you've read and the testimony you heard today, how would you characterize the accuracy, the factual accuracy of Mr. Reavis' beliefs and observations about the incident at Waco?

Mr. JAHN. The ones I have direct personal knowledge of—I know he didn't ask me about my knowledge, my involvement, my participation, but he does assert I had a personal interest in the outcome of the trial because I'd done it.

The other one is, for instance, he describes me as short. I'm 6 feet, 2 inches tall. Maybe by Texas Ranger standards, that's short, but in an ordinary person that's not defined as short.

I have not had a chance to go through, one by one, but like so many of these—not so many, but there are some things that are grossly wrong, some things that are slightly wrong, and some things that are correct. I really couldn't give you—

Mr. SCHUMER. Does it have a series, or at least the parts you know, a series of inaccuracies?

Mr. JAHN. Yes, sir.

Mr. SCHUMER. Thank you.

Now, I—this is an AK-47 rifle that's converted into a machinegun. Let me ask you, Mr. Jahn, do you have any doubt, any doubt that there were illegally converted machineguns like this in the Davidian compound?

Mr. JAHN. None whatsoever. In fact, we found two, one in a car and one in the ashes, both of which still fired.

Mr. SCHUMER. No doubt at all.

And second, from your knowledge as a U.S. attorney, do you believe that it is ever, ever appropriate to answer a Federal warrant, no matter how poorly drafted, with a machinegun?

Mr. JAHN. I don't believe that. I believe that that's the purpose of going to court, so you can resolve it. That's the purpose of having excellent attorneys like these defendants did eventually on the trial, so that you can make that determination.

Mr. SCHUMER. Thank you.

And it's my understanding, by the way—and we'll bring this out later—that none of the excellent attorneys; and he had some of the best in the Southwest—that none of the excellent attorneys that represented the people ever challenged the legality of the warrant. Is that correct?

Mr. JAHN. The warrant itself, they did not. They challenged the knock-and-announce provision. There was a hearing on that, and the court found it had been complied with.

Mr. SCHUMER. But not the legality of the warrant?

Mr. JAHN. That's correct.

Mr. SCHUMER. And would it—if they thought the warrant was illegal or something was wrong with it, would it not be an ethical violation for them to fail to challenge it?

Mr. JAHN. I never like to say an ethical violation, because you don't really necessarily force an attorney to make that decision. But these attorneys were good attorneys.

Mr. SCHUMER. Thank you, Mr. Jahn. I have no further questions.

Mr. ZELIFF. OK. Chairman Clinger, Chairman Hyde are not here, so we'll move on to—

Mr. SCHUMER. Mr. Chairman, would it allow me in the rules, if I didn't use all my time, to yield to one of our members? Is that acceptable?

Mr. ZELIFF. If you do that, we will then have to use—I just passed over two of our members.

Mr. SCHUMER. No, no, I don't mean extra time. I mean the remainder of my 5 minutes.

Mr. ZELIFF. We're trying to be fair, but—

Mr. SCHUMER. All right.

Mr. ZELIFF [continuing]. I passed over.

Mr. SCHUMER. We will try in the next round to give Mr. Gene Taylor his time. Thank you.

Mr. ZELIFF. The Chair now recognizes the full oversight ranking minority member, Cardiss Collins of Illinois. Mrs. Collins.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman.

Mr. Jahn, gun control opponents have made serious charges that the four ATF agents killed in the raid were shot not by Davidians but in fact by other ATF agents in what is called "friendly fire." I'd like to ask you to describe the evidence of exactly who shot the four ATF agents.

Mr. JAHN. We—we did a great deal of research and work on that particular matter, ma'am, because we figured the friendly fire allegation would be one of them. In fact, we found an instance in which one of the wounded agents totally removed from the deceased agents had, in fact, probably been hit by one of his own people during the course of the shooting in that little room up there. Every piece or particle or fragment that was recovered from these deceased agents was examined by our firearms expert and compared against the bullets. We took bullets off of every ATF gun that was out there, whether they were fired or not, and compared them against the fragments. There was absolutely no—no comparison whatsoever that would place it with ATF. Moreover, many of them were killed by AK-47 fire, and the AK-47's were only handled by the—or had by the Branch Davidians that day. There were no—no U.S. AK-47's at Mount Carmel.

Mrs. COLLINS of Illinois. Could you tell me what evidence you have that David Koresh was actually abusing children with the acquiescence of their parents?

Mr. JAHN. We had—at trial, we had none. We were trying to introduce that evidence and the court held that because Koresh was dead, the probative value was outweighed by the prejudice. I understand there perhaps will be—the best case we had may testify at this hearing later on, and I don't want to get in a position of embarrassing a juvenile by making some statement. But we—the best we had, I understand, will be testifying.

Mrs. COLLINS of Illinois. Well, the NRA and the committee's Republican staff have attempted to xray the 48 illegal weapons, and apparently they believe that some new tests could prove that these

were not illegal weapons. Now, could you describe the methods that were used by the prosecution to determine whether the weapons were in fact illegal, Mr. Jahn?

Mr. JAHN. We used special agents; James Caddigan of the FBI—and I understand he's also scheduled to testify—had to be one of the best firearms experts I ever dealt with. I think he had 12 to 15 years experience. What he did was go through the firearms that were fortunate enough to be intact, and he disassembled them, examined them, found out how they had been made.

He read the literature. We had the books that they had purchased on how to convert these weapons. He examined the tools that were used to convert these weapons. And then he went back and made basically a firearm-by-firearm examination of the superficial things that he could see. Because these guns were all burned and they were all encrusted with ashes and everything else, so he could not disassemble them.

But he went through and looked for the five or six features that he found common on all the working automatic weapons that were seized in Mount Carmel. And that's what he based his opinion on.

In fact, he was very conservative. There were probably some other weapons that someone else may have estimated to be automatic, but instead, he limited himself to the ones that he found all of those particular portions before he made his opinion, and that was a total of 48.

Mrs. COLLINS of Illinois. Mr. Chairman, the green light is still on. Would I be permitted to yield to—

Mr. ZELIFF. Yes, you can.

Mrs. COLLINS of Illinois. Oh, OK. I'd be glad to yield to Congressman Taylor.

Mr. SCHUMER. Mr. Chairman, at this point—

Mr. ZELIFF. Just so everybody understands what we were trying to do—

Mrs. COLLINS of Illinois. You're talking on my time, Mr. Chairman.

Mr. ZELIFF. I won't penalize you. I'm going to try to give you something, if you'll be willing to accept it.

Mrs. COLLINS of Illinois. I'll accept it.

Mr. ZELIFF. OK. This is really straight stuff now. In the interest of being fair, we just had another huddle here. Our two chairmen weren't here, so they can't yield their time. We went back over and talked again.

Mr. Schumer's comment, he does have a minute left that he can yield. You can take whatever time you want with your time as well. So we're doing everything we can, to the best of our ability, to give you every edge we can possibly give you.

Mr. SCHUMER. Mr. Chairman.

Mr. ZELIFF. Yes.

Mr. SCHUMER. First, I want to thank you for that fairness, and second, would it be permissible for me at this point as opposed to later to yield my additional minute—

Mr. ZELIFF. Absolutely.

Mr. SCHUMER [continuing]. To Mr. Taylor?

Mr. ZELIFF. You may do anything you like.

Mr. SCHUMER. I yield my remaining time to Mr. Taylor as well.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman.

Mr. TAYLOR. I want to thank my colleagues.

Mr. Reavis, I am somewhat shocked about your statements implying, in effect, that Mr. Koresh was a normal Christian preacher and that he was just going about his normal business as a gun dealer.

Do you know of any other Christian churches that buy and sell guns as a business? Is this what Billy Graham or Pat Robertson or even the Pope of the Catholic church does?

Do you know of any other Christian religions that compile a hit list, as Ms. Bunds says in her testimony, of former cult members that should be eliminated?

Do you know of any other Christian religion that keeps people for 3 months at a time without their consent?

Again, Mr. Chairman, as I said earlier, I don't think we can start on the day of the raid. I think we have to look at the events that led up to the raid to get a true picture of whether or not the people who were paid by this Government to enforce the law, the laws this Congress passes, were acting properly. I would like you to answer that.

Mr. REAVIS. I think you mischaracterized me.

In the first place, I don't know what a normal Christian preacher is. And I think if I did, I'd have a lot of denominations on top of me.

Mr. TAYLOR. How about answering the other specific questions?

Mr. REAVIS. OK.

But second, I don't, how do you say—I say that David Koresh was guilty of arms violations insofar as I can see, and that he was guilty of statutory rape, and that there were grounds on which to arrest him. Nothing I say in my book goes contrary to that.

All I was saying in my earlier testimony was that he did not invent his religion. He inherited it and changed it within a tradition. He was not a Charles Manson who cooked up a religion of nothing.

Mr. TAYLOR. Mr. Reavis, if I may, does your book—and I have not had the opportunity to read it. I understand the Presbyterians have something like a parish council that chooses the new preacher. I'm a Catholic; the bishop sends us our priest. Tell us how Mr. Koresh got rid of George Roden, and if this is the normal routine within the Branch Davidians for one preacher to succeed another.

Mr. ZELIFF. The time is up. If you could just kind of—

Mr. TAYLOR. I've asked the question.

Mr. REAVIS. Before 1940, the Davidian Seventh-day Adventist Association, Koresh's predecessors, adopted a set of rules which says God appoints our prophet. Now I'm not sure how you know who your prophet is when God appoints him, but Koresh's followers said God had appointed him. And George Roden's followers, of which there weren't many, said George had been appointed by God.

And what happened ultimately was that George didn't pay the back taxes on Mount Carmel, and David's followers did, so they took possession of Mount Carmel.

Now your references to a gun battle—

Mr. TAYLOR. That's correct.

Mr. REAVIS [continuing]. Where David and them went to shoot a picture at Mount Carmel and wound up in a gunfight with

George Roden, who was wounded in the thumb. David and his people were tried. All of them but David were acquitted, and the jury hung in regards to David.

Mr. TAYLOR. Is that the normal procedure for that church, for one preacher to shoot at another?

Mr. REAVIS. I don't—in that church? No, it had never happened before, and I don't guess it would ever happen again.

Mr. ZELIFF. The time has expired. The Chair now recognizes the full Judiciary ranking minority member, Mr. John Conyers, from Michigan.

Mr. CONYERS. Thank you, Mr. Chairman.

We've got a—some conflicting testimony here about who David Koresh was, and it's not at all clear to me what kind of picture is emerging. We find that he's probably committed crimes against minors, young girls; he's violated gun laws.

We have a curious picture emerging here, and I'd just like to inquire of Mr. Reavis, who's been pretty helpful, did you state in your book on page 122, that you thought that the ATF was seeking to enforce unconstitutional firearms laws?

Mr. REAVIS. I think what you'll find in that chapter of my book is that I found a scholar who studied the constitutional history of firearms laws and whose opinion is that they may not be constitutional. I'm not a judge and I don't know.

I was quite impressed to find out that that argument could be made and thought readers deserved a chance to see it.

Mr. CONYERS. Yes. Well, now that you studied it and written and promoted it, what do you think?

Mr. REAVIS. Whether or not they're constitutional?

Mr. CONYERS. Aren't you worried about that? Yes, whether they're constitutional.

Mr. REAVIS. Tell you what—

Mr. CONYERS. I mean, is it OK for everybody to carry automatic weapons and defend themselves on the basis that they're unconstitutional?

Mr. REAVIS. No, given the present state of the law, it's clearly not.

Mr. CONYERS. Thank you very much.

Now, did you state that in your book anywhere?

Mr. REAVIS. Did I state what?

Mr. CONYERS. What you just said, namely that it is not constitutional to carry automatic weapons.

Mr. REAVIS. I said it was illegal.

Mr. CONYERS. In your book?

Mr. REAVIS. Sure.

Mr. CONYERS. Here?

Mr. REAVIS. I just said—in here I just said.

Mr. CONYERS. Well, on page 120—I know what you—

Mr. REAVIS. Show me the line.

Mr. CONYERS. Just a moment.

"If the findings of these professors are trustworthy, the laws that the ATF sought to enforce at Mount Carmel on February 28, were unconstitutional."

Mr. REAVIS. Right.

Mr. CONYERS. Quote.

Mr. REAVIS. "If the findings of these professors are trustworthy, that is a question to be litigated in the courts."

Mr. CONYERS. OK. Page 293, "The prosecution heaps of evidence also included what appeared to be illegal homemade silencers for rifles and 48 semiautomatic rifles that had been converted to automatic fire."

Does that concern you about being unconstitutional? That's a violation of law, isn't it?

Mr. REAVIS. That's certainly what I say.

Mr. CONYERS. It's certainly what you say here. It's not what you said in the book.

Mr. REAVIS. No, in the book I was reviewing the work of a professor who argues that these laws aren't constitutional.

Mr. CONYERS. I get it, I understand. You've learned a lot since you wrote the book. That's what I'm beginning to understand. And I'm glad that we're kind of getting this down to some little finer points here.

I mean, it's nice to write a book about what may or may not be constitutional and unconstitutional, but yet when you come here to testify, well, there's no question now that you've thought about it, this is not so unconstitutional as you would have thought.

Mr. REAVIS. I didn't say——

Mr. CONYERS. Just a moment. I didn't ask you a question there. I was just reviewing your testimony.

Mr. Jahn, I'd like to just invite you to tell us a little bit about this warrant. I mean, could there be any question about its invalidity?

Mr. JAHN. We didn't have any question about it, sir. We looked it over; there was a lot of surplusage. There's a lot of stuff that perhaps should not have been in there. There's a lot of stuff that, had I been the author, I might not have included. In fact, there's some that was deleted before the final warrants were served. But I had no question as to its validity.

Mr. CONYERS. The people that had put it together were not newcomers to this business; they had been doing this for quite a few years, had they not?

Mr. JAHN. That's correct. And I think you'll always find room for lawyers to argue one way or the other. That's what they're paid for; that's what they're trained to do.

Mr. CONYERS. Finally, the dynamic entry question.

Mr. ZELIFF. The gentleman's time has expired. If you could kind of just bring it together.

Mr. CONYERS. I'll just finish, let him respond. Is there any way we could have avoided a dynamic entry?

Mr. JAHN. You're asking far beyond my capability, sir. That would be something I would have to defer to the experts, which would either be the FBI hostage rescue SWAT-type people or the DEA's or the ATF's.

Mr. CONYERS. We'll get to them. Thank you very much.

Mr. ZELIFF. Mr. Reavis, did you have a chance to respond to one of Mr. Conyers' questions? I want to make sure we're fair to everybody here.

Mr. CONYERS. Mr. Chairman, I hadn't asked him a question that he didn't respond to. I was making an observation.

Mr. ZELIFF. Do you agree?

Mr. REAVIS. I do not agree.

Mr. ZELIFF. OK. Would you like to respond?

Mr. CONYERS. Well, I don't agree with the witness.

Mr. ZELIFF. Would you like to respond? Go ahead and respond.

Mr. CONYERS. Mr. Chairman, just a minute, Mr. Chairman.

Mr. ZELIFF. I'm just trying to be fair.

Mr. CONYERS. I want to be very fair. But any questions my witnesses don't answer, I'll—I'll get to the bottom of it. I don't need the chairman to help me get the response to questions I ask the witnesses.

Mr. COBLE. Mr. Chairman.

Mr. CONYERS. Thank you very much. And anybody else that wants to ask him about it can do it on their own time, regularly accorded.

Mr. ZELIFF. I would just like to ask my colleague, in the event—if the witness was cut off and didn't get a chance to respond, I just wanted to be fair to give the man a chance to—

Mr. CONYERS. I was just pointing out to you that he did not fail to respond to any questions that I asked. I was satisfied with that.

Mr. COBLE. Mr. Chairman.

Mr. ZELIFF. Yes, sir.

Mr. COBLE. Mr. Chairman, I think it is incumbent upon all of us to extend courtesy to these witnesses. I don't see what harm would result or ensue if the gentleman were allowed to explain, perhaps, a response he didn't get a chance to do.

Mr. CONYERS. Mr. Chairman, since everybody wants this question that I didn't ask answered, I would be delighted to invite Mr. Reavis to make any further comments he should choose.

Mr. ZELIFF. Thank you, Mr. Conyers; in the interest of fairness and everything, thank you very much.

Mr. REAVIS. I think we have to distinguish between illegality and constitutionality. I'll give you an example.

One time I was convicted of vagrancy and leading a profligate life in Alabama. What I did was illegal. Later, it turned out that the law under which I was convicted was ruled unconstitutional.

There's always that gap. You never know when a law is constitutional. You presume it is at the point of arrest. Things are afterwards tested.

David Koresh's possession of arms was illegal. Whether or not the arms laws are constitutional will be—at this point, the courts say they are. Tomorrow, they may say different because of the research I cite in my book.

Mr. ZELIFF. Thank you very much. This completes the first panel, and I thank the witnesses for coming. Again, thank you for your patience with all of the votes and everything.

And we'll look forward to the next panel if they would move forward. Thank you.

I'll yield to Bill McCollum.

Mr. MCCOLLUM [presiding]. If I could, I would thank the chairman of the Subcommittee on National Security, International Affairs, and Criminal Justice for yielding to me. We are going to share this podium today by prearranged agreement.

The committee will be in order. And I would like to, by name, introduce the panel of the next group of witnesses who are coming forward to be our witnesses for this second round.

The first witness is Gerald Goldstein. Mr. Goldstein is president of the National Association of Criminal Defense Lawyers. Next to Mr. Goldstein is Robert Deschamps, president of the National District Attorneys Association. The third witness is Henry McMahon, a firearms dealer who did business with David Koresh. The fourth witness is David Thibodeau, who was a resident at Mount Carmel throughout the siege. The fifth witness is Kiri Jewell, who also was a resident at Mount Carmel. Our final witness on this panel is Lewis Gene Barber, a former lieutenant with the McLennan County Sheriff's Office.

Mr. MCCOLLUM. Now, if each of you would stand, I'm going to have to swear you in at this point in time according to our procedures. Raise your right hands.

[Witnesses sworn.]

Mr. MCCOLLUM. You may be seated. The record will show that all answered in the affirmative.

At this point in time, under the rules that we have unanimously agreed to in this joint committee, I yield 15 minutes to Mr. Barr. Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman. Could we have the names in the proper locations there? If I could ask the clerks to—Thank you. Mr. Thibodeau—

Mr. MCCOLLUM. Excuse me, before we get started, is Mr. Barber here with us today? Did I miss him as a witness? We asked him to come forward and apparently he is not with us today. Is that correct? We apparently are missing Mr. Barber from this panel for whatever reason.

Would the gentleman sitting next to Mr. Thibodeau and Ms. Jewell tell us who you are, please, sir?

Mr. DAVID JEWELL. Yes, thank you. My name is David Jewell; I'm Kiri's father.

Mr. MCCOLLUM. That's very good.

Mr. BARR. Mr. Chairman, I couldn't hear that.

Mr. MCCOLLUM. He is Kiri's father.

Would you turn the microphone on and put that in the record, please, sir? You need to turn it on; there's a little switch right under there. There you go.

Mr. DAVID JEWELL. OK, thank you, it's working now. My name is David Jewell. I'm Kiri's father.

Mr. MCCOLLUM. Thank you very much. Apparently, we are missing Mr. Barber, and we don't have him here; so if we get a chance to bring him up on another panel we will, but otherwise, please, Mr. Barr, proceed.

Mr. BARR. OK. Thank you, Mr. Chairman.

Mr. Thibodeau, if you could, please—over here, to your left. Appreciate your coming here. If you could, please, recount very briefly the extent of your knowledge of the compound at Mount Carmel. How long were you there and in what capacity, please?



**STATEMENT OF DAVID THIBODEAU, RESIDENT AT MOUNT  
CARMEL**

Mr. THIBODEAU. I met Koresh in approximately 1980-91; and I had the opportunity, after about 3 or 4 months of getting to know him and some of the people, of going to Passover of 1991, I believe it was, in Waco. I was there for about 2 or 3 weeks, and then I went up north to Maine. And then I went back to California where—David had property there and I spent some time there. I also had an apartment at the time, and I was between the two. And then finally they decided they were going to move back to Waco for a while, so I went with them. At this point, I was becoming involved in the music and the spiritual teachings and decided to move. I was there for some time and for the next couple years was on and off between California and Waco.

Mr. BARR. Were you familiar with Mr. Koresh's daily habits, what he did?

Mr. THIBODEAU. Yes.

Mr. BARR. Including on what occasions and under what circumstances he would leave the compound?

Mr. THIBODEAU. Pretty much. I mean, I lived with him on a daily basis, on and off. I mean—you know, I had certain things that I did. I was really concentrating on music, and I obviously would not be questioning him when he would go to town and things, but there were times, I would go various places with him. So I guess, yes.

Mr. BARR. OK. Was there any regularity to his leaving the compound? Did he leave certain days, certain days of the week, certain times, or was it sporadic?

Mr. THIBODEAU. It was sporadic. I mean, there would be times when he would not leave at all, when he would just stay in and give studies. There would be other times when he would leave. But it was—he left frequently.

Mr. BARR. Would that include during the 2 or 3 months prior to the raid in February? In other words, during the month of February and January and then December 1992, did he leave the compound on numerous occasions?

Mr. THIBODEAU. Right before—are you—I'm sorry, was it 2 or 3 weeks before the raid?

Mr. BARR. During the 2 or 3 months before the raid.

Mr. THIBODEAU. Yes, yes, he did; yes, he did.

Mr. BARR. OK. Do you recall or do you know what was the last time he left the compound?

Mr. THIBODEAU. I recall that approximately 2 weeks before the raid he was going through a period of time where he wanted to get back into health and back into shape. And so he would go out running and some of the guys would go jogging with him. And he would go up the driveway to where the Double—I believe it was the Double E Ranch Road, the dirt road that was in front of the building, and he would jog directly in front of the two houses that were across the street—one, of course, was the surveillance house—all the way down to the stop sign, maybe about a mile or so—I'm not really sure what the measurements were—and then back.

And then usually, you know, some of the guys would come on the property and we'd do some jogging on the property as well.

And I know that he went to town infrequently, but still went to town on a number of occasions. I guess one thing that I could try to refer you to is that I remember during the course of the 51-day standoff, when the FBI—I believe it was the FBI—initially said that he never left the building, you know, he never left, we couldn't possibly have gotten him. I remember the Waco Tribune Herald and some other media came forward, because a number of people within the community of Waco had come forward saying that they had seen him in their places of business just days before the raid.

I believe one was Chelsea's Bar and Grill, and that's the only one that really stands out, but I remember a couple of businessmen from Waco came forward saying, he was in my store just last week or just the other day.

Mr. BARR. When he would go jogging, was this at night or during the day?

Mr. THIBODEAU. During the day.

Mr. BARR. Would he make any effort to hide the fact that he was leaving the compound to go jogging?

Mr. THIBODEAU. No. When you go jogging with a group of five or six guys, I don't think you can really conceal that.

Mr. BARR. OK. Are you familiar, Mr. Thibodeau, with the affidavit in support of the search warrant in this case?

Mr. THIBODEAU. I have read it, but I'm not that proficient with all the technicalities in it.

Mr. BARR. No, I understand that. But you have read it, you're generally familiar with it?

Mr. THIBODEAU. Generally, very generally, yes.

Mr. BARR. Do you recall it as being a rather lengthy document?

Mr. THIBODEAU. Yes, I do.

Mr. BARR. Do you recall it as being a document that had all sorts of stuff just kind of thrown together in it?

Mr. THIBODEAU. Yeah, it's—to me, it seemed to be kind of like a press report, only in a legal document. I mean, you know, it talked about obviously—I mean, from my understanding of the law, if you're going to go after someone for what you consider to be illegal activity, that's what you would concentrate on in a search and arrest warrant. And from my understanding it is—you know, it went into the wives and the different aspects that have been covered today of certain aspects of child abuse that's trying to be proven. So I—I guess that was kind of irregular.

I remember one thing that kind of stood out, and only stood out because it was pointed out to me later, is I believe, if I'm correct, it talks about an AK-47 having an upper and a lower receiver. I think anyone who's familiar with that particular firearm knows that there is no upper and lower receiver to an AK-47, which would indicate that there was a problem with the search warrant, specifically with that one particular firearm.

Mr. BARR. OK. You saw, I forget who was on the other side make a big deal of holding up a weapon a few moments ago?

Mr. THIBODEAU. Actually, I think I was outside, I had to leave for a moment.

Mr. BARR. Well, you missed quite a show. There was a weapon held up, stating it was a machinegun or whatnot, which certainly

raises questions about what it's doing here. Do you recall seeing machineguns—

Mr. THIBODEAU. No.

Mr. BARR [continuing]. At the compound?

Mr. THIBODEAU. No. I did see AK-47's and I did see AR-15's, and there were times, various times, when different people would go out and shoot on the firing range. There were times when people that we knew from the community would come out and fire at our firing range.

To me—I'm from the East, I'm from up in Maine, and I was not raised around firearms; and to me, it wasn't—I mean, it wasn't something that I was really into. But being there, I did notice there was kind of a different mentality. I don't know if it would be Texas or whatnot, but it seemed like a lot of our neighbors would come over, you know, neighbors from in the community would come over and fire. It didn't seem to be as big a thing as it did where I was from, so it became acceptable.

Mr. BARR. OK. Is it possible that there were machineguns there that you weren't aware of?

Mr. THIBODEAU. Yes, that's possible.

Mr. BARR. OK. There was also in this rather lengthy affidavit a discussion of a meth lab, which I believe, having been a prosecutor, refers—would refer to methamphetamine, which is a controlled substance, a mind-altering drug. Are you aware of any—of any such facility anywhere in the compound?

Mr. THIBODEAU. There was absolutely no drugs at Mount Carmel, period, other than alcohol once in a great while when it was—when we worked particularly hard and, you know, everyone felt that they just needed to unwind. But generally, anything like that was done—there was a sobriety there that was to be practiced and anything like that that was done was on a very sporadic basis. And David Koresh was absolutely against drugs. David Koresh was—

Mr. BARR. Is it possible that there was a laboratory, manufacturing controlled substances, that you hadn't known about?

Mr. THIBODEAU. I've been all over that property. I never saw anything that would even—that I would even think would be. That's absolutely impossible.

Mr. BARR. OK. Another one of the items that was contained in the affidavit referred to pineapple-style handgrenades, those that I suppose you see in magazines that people use for paper weights. Have you seen those?

Mr. THIBODEAU. I saw the casings for those, but I didn't see, you know, an actual grenade. I mean, I saw the casings, yes.

Mr. BARR. OK. Were these live grenades?

Mr. THIBODEAU. Not to my knowledge.

Mr. BARR. OK.

Mr. THIBODEAU. I mean, let me put it to you this way. I've never seen one explode or go off, other than war movies and things like that. But I just don't know.

Mr. BARR. OK. Do you know whether or not the compound was ever visited by agents of the Drug Enforcement Administration investigating allegations of a methamphetamine lab?

Mr. THIBODEAU. No, I don't. I know that there was some activity that took place in 1987, a few years before I was there. It was re-

volving around what the gentleman over here brought up, the George Roden issue. And from what my understanding was—and this came from a couple different people that were within the community there—was that when David came out on that particular, that particular incident that was discussed earlier, he was shot at by George Roden and some of the guys—especially, I think it was Stan Sylvia and Floyd Houtman were shot at. And so they were in an open field to protect them, to protect them. David shot at George, hitting the tree in front of him.

Now, what I had found out later—and, again, this is word of mouth—was that there were things that were found that could constitute making a methamphetamine lab. There was certain chemicals and things that were found. Now the understanding that I have from a couple different people was that that was turned over to the sheriff's department, and when the whole thing went to trial, the evidence of any methamphetamine somehow was not at the trial; it seemed to have disappeared.

I don't know what all that means, but these are the stories that I heard from a number of different people that were around at that era of time.

Mr. BARR. OK. Would you tell me what the term Mag-Bag means, if anything, to you?

Mr. THIBODEAU. I knew Mag-Bag just to be a garage that was about 2 to 3 miles away from where the building was. I know that there was a car restoration company going there.

Mr. BARR. Two or three miles from the living quarters?

Mr. THIBODEAU. Yes. That's a rough estimate. I'm pretty bad with distances and numbers.

Mr. BARR. But it was quite a ways?

Mr. THIBODEAU. Yeah, yeah. Well—

Mr. BARR. Maybe not by Texas terms, but in Georgia terms it would be.

Mr. THIBODEAU. Yes, that's what I was thinking. It was quite—it would have been a long walk, put it that way. You probably could have biked it in about an hour.

Mr. BARR. OK. And what was the Mag-Bag?

Mr. THIBODEAU. Like I said, it was just a garage where they restored cars, custom Camaros, things like this. I know that Peter Hipsman and Michael Schroeder were down there pretty frequently; they actually lived there, and Bob Kendrick for a time lived there as well. But it was Peter that did the majority of the work, actually painting and restoring the cars, and Mike did the mechanical work.

Mr. BARR. OK. Did the term refer to anything else, as far as you know, for example, a corporate entity by that name?

Mr. THIBODEAU. That's possible.

Mr. BARR. OK. You're not aware of that, though?

Mr. THIBODEAU. No, it's not my thing.

Mr. BARR. OK.

[The prepared statement of Mr. Thibodeau follows:]

PREPARED STATEMENT OF DAVID THIBODEAU, RESIDENT AT MOUNT CARMEL

Mr. Chairman, on February 28, 1993 the world witnessed a vulgar display of force set against a community of people living in a large home on the barren prairie lands of Texas. One hundred men dressed in black with fully-automatic weapons, that ini-

tially were reported to be set for two round bursts, attacked and fired into a building containing a majority of women and children. The evidence of the pattern and the amount of holes passing threw the sheet rock walls indicated other than just a two round burst. The video taken from behind the BATF lines indicated not that the BATF were being ambushed as, initially reported, but that they were on the set of a RAMBO movie. BATF agents are seen standing up behind cars, that if they were in danger, they would be kneeling behind. The agents were also depicted shooting indiscriminately into the second story of the building, where the women and the children were. The helicopters in the back were firing indiscriminately into the building as well, according to eyewitness testimony. The roof of the tower was riddled with bullet holes shot from the air. After the shooting stopped, five of my closest friends, people whom I considered family, were dead, not to mention the five Alaskan Malamute dogs gunned down by the BATF as they stood barking in a penned up area toward the front of the building helpless to protect themselves. I would say the child abuse began when the BATF murdered the children's dogs, while the kids, cowering under the upstairs beds, listened in horror as their pets cried out in pain and anguish from the BATF slaughter of the animals.

Three or four eyewitnesses I spoke with claim the BATF shot first into the building. The trials in San Antonio indicated that vital evidence was not entered in. The twin steel doors at the front, one David had in his hands when he attempted to greet the BATF, were riddled with bullet fire coming from the outside into the building. One door was entered into evidence by the prosecution, while the other door the prosecution claimed, "must have disintegrated in the fire." There is a curious lack of any video tape taken from the BATF surveillance house across the street on the day of the raid. It's obvious that something is being hidden from the public. I find it surprising with the amount of agents on the scene, the largest raid in law enforcement history, that at least one camera was not functioning to record the early segments of this raid.

There was no trust between the people inside and the FBI from the outset. The rift between the FBI negotiators and the tactical commanders did nothing but create a disharmony as opposed to a trust needed in such a volatile situation. Despite all the biased press reports David Koresh was coming out. The Seven Seal manuscript was the zenith of his life and not allowing him to finish it after having been promised truly did bring about one of the saddest days in American history. If I didn't get to see the tanks come into our living room, blocking passageways and knocking down stairs, causing the building to be knocked off its foundation, shaking it like it were some large earthquake, I never would have believed this was the land I grew up in, the country I loved, the United States of America.

"Were not going to fire into the building," the speakers exclaimed as four hundred ferret rounds, as big as a coke can, were fired into the building. One of those ferret rounds hit Jimmy Riddle in the side of the head. Barrel after barrel of the liquid CS gas were sprayed into the building, enough to debilitate a number if not all of the people. The crime scene had already been destroyed by the tanks previously so why not just tear the building apart, causing an oxygen flow system in the building as well as a fire hazard. The area around the building had been cleared as if a fire break were being created. The fire trucks were held at the check points till the fire virtually consumed the building. The plane flying above the building was armed with an Infra-red camera recording the events, and finally, I want to know, why was Parkland Memorial Hospital called at 6:00 a.m. the morning of April 19, by the FBI, and asked, "how many beds are available in your burn unit" It seems grossly negligent, if not criminal. The FBI could prepare enough to ask the hospital about the availability of beds in their burn unit but not have a tank equipped to fight a fire.

The saddest part of all is the claim Janet Reno and the FBI made over and over, the children, the children, we will do nothing to endanger the children. It is my testimony that the children would have been much better off without the Government concern and intervention. Had the BATF talked with the sheriff Jack Harwell, or come to the property in peace when David had invited them out, this whole thing could have been avoided. It takes a brave public servant that believes in the rights of all the people of this nation to go to the door, knock, present a search warrant and proceed from there. This phenomena of the "dynamic entry," shows nothing but cowardice and fear, strength in numbers, power in oppression. Not the America I remember, or one I wish to live in with my family in the pursuit of happiness.

Mr. BARR. Mr. Goldstein, if I could ask you, if you have had the opportunity to review the affidavit that I have been taking a few moments here to review with Mr. Thibodeau.

**STATEMENT OF GERALD H. GOLDSTEIN, PRESIDENT,  
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS**

Mr. GOLDSTEIN. I have.

Mr. MCCOLLUM. Mr. Goldstein, would you please turn your mike on? There's a switch there. Thank you.

Mr. GOLDSTEIN. I have.

Mr. BARR. Could you, please—we've heard testimony, speculation earlier about its sufficiency and whether or not it was subject to a successful challenge or not; and apparently it was—it withstood at least whatever judicial scrutiny it was afforded previously.

What, in your opinion, as a learned—an attorney with experience in reviewing and, I suppose, challenging affidavits, is your impression of this affidavit?

Mr. GOLDSTEIN. It, like many other affidavits that lawyers that practice in the criminal courts from one courthouse to another across this country, is not terribly atypical. I will tell you that it is chock full of irrelevant, highly inflammatory material. That's not that unusual.

Many of you are good lawyers. That's what lawyers usually do, is try and convince somebody of something.

It definitely has matters that fall well beyond, for example, either the expertise or jurisdiction of the particular agency seeking the warrant—that is, matters of child molestation that obviously would inflame anyone that read it, just like it probably has the people that listen to this hearing. Nevertheless, they have little to do with the underlying justification for the entry.

There are allegations that many of these matters are misstated. Quite frankly, one of the problems that we have is quite—if I could tell you gentlemen anything about what we need to do, is that those of us who are in the trenches trying these cases day in and day out are gumming these law enforcement agents to death. We have been deprived of any teeth in the exclusionary rule, in the mechanism that we have, the sole fourth amendment protection that we have, to attempt to regulate these agencies. And efforts to dilute that protection is frustrating any—that's—if you want to know why nobody filed a motion to suppress, I would suggest that that probably goes a long way.

For example, misstatements. If there is an omission, critical omission that would have made a difference to a magistrate, if one of these statements in the affidavit in fact is an outright lie, in order to get a hearing, in order to subpoena a single witness, in order to ask a single question, we've got to show by affidavit or sworn testimony or otherwise that there is a lie in the affidavit before we even get a chance to have a hearing.

I wish I had 8 days of congressional hearings on every warrant that I suspect is—is flawed with misstatements. I've never had a suppression hearing that lasted 8 days, much less this kind of inquiry. The fact that the warrant may lack probable cause, it's a pretty close call. This one just might lack probable cause but quite frankly to the lawyers that were out there in the trenches trying this case, it didn't make a hill of beans. It wouldn't matter because the good-faith exception allows the judge to admit evidence even though the affidavit and the warrant totally lack probable cause.

That's where the problem and that's where the solution can come. Not in providing more authority to law enforcement, not in being concerned about this abuse on today and yet passing measures that in fact apply the good-faith exception that I just described for warrants and apply it to warrantless searches. Senate bill 3, section 507, will do away with the exclusionary rule altogether. We'll have no way of restricting and discouraging officers from engaging in these kinds of activities.

[The prepared statement of Mr. Goldstein follows:]

PREPARED STATEMENT OF GERALD H. GOLDSTEIN, PRESIDENT, NATIONAL ASSOCIATION OF  
CRIMINAL DEFENSE LAWYERS

**Chairmen and members of the Subcommittee:**

Thank you for providing me this opportunity to testify on behalf of the members of the National Association of Criminal Defense Lawyers (NACDL) regarding our Fourth Amendment privacy concerns and the lessons that can be learned from the Waco tragedy.

The almost 30,000 affiliated members of the National Association of Criminal Defense Lawyers consist of private defense attorneys, public defenders and law professors, who have devoted their professional lives to representing citizens accused of crime, preserving the Bill of Rights, and insuring fairness within the criminal justice system. NACDL has a particular interest in, and special qualifications to address the privacy concerns and Fourth Amendment issues raised by the February 28, 1993 raid on the Mount Carmel Center outside Waco, Texas.

**PURPOSE OF FOURTH AMENDMENT PROTECTIONS  
THE RIGHT TO BE LEFT ALONE**

Any evaluation of the events that led up to the failed attempt to execute a warrant for the search of the 77-acre "Branch Davidian" compound and arrest of group leader David Koresh should begin with an understanding of the Fourth Amendment safeguards designed to protect the privacy of all citizens.

The most important limitation upon the government's power to intrude upon its citizens' privacy is the Fourth Amendment to the Constitution of the United States. The



text of the Fourth Amendment provides that:

**"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."<sup>1</sup>**

The substance and import of this restriction on governmental authority goes well beyond the security of one's personal effects.

Its scope may have been best described by Justice Brandeis in his now famous, eloquent and oft-quoted dissent in *Olmsstead v. United States*, 277 U.S. 438, 478 (1928):

**"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be left alone--the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment."**

The Fourth Amendment protection of a citizen's privacy against his or her

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<sup>1</sup>U.S. Constitution, Amendment IV.

government's intrusion is the linchpin upon which all other civil liberties hinge. Freedom of speech, religion, and association – so essential to a free society – would mean little if the citizens' activities and communications were not protected against government interference and interception.

### NEW DANGER FROM WITHIN

Even as these Subcommittees begin to review the tragic debacle at Waco, ironically both Houses of Congress are considering measures to expand still further the powers of the very federal agencies responsible for that and other disasters. Those measures would bring about dramatic increases in the unchecked power, authority, and role of federal officials in everyday American life. They are inconsistent with the concept of *limiting* the power of federal government otherwise advanced by these same political leaders and are contrary to the principles of *limited* government upon which this nation was founded.

Members of the National Association of Criminal Defense Lawyers are intimately familiar with the growing aggressive, paramilitarization of federal law enforcement in recent years. As NACDL's president, I feel a responsibility to alert you to the additional threats posed under these circumstances by measures now under consideration here on Capitol Hill. This is *not* the time to loosen the constitutional reins on federal law enforcement or scale back protection of citizens' individual and property rights.

The Nuremberg prosecutor, Justice Robert Jackson, warned us well:

"[Fourth Amendment rights] ... are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowering a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government....

But the right to be secure against searches and seizures is one of the most difficult to protect. Since the officers are themselves the chief invaders, there is no enforcement outside the court."<sup>2</sup>

Some of those who today express concern about federal law enforcement tactics in Waco are the very sponsors and supporters of pending proposals to emasculate and even eliminate the very safeguards which provide our citizenry protection against such governmental abuses.

Election-day rhetoric has given many citizens the misconception that "liberal courts" using "technicalities" regularly loose criminals to prey upon innocent citizens. It is rarely mentioned that among these "technicalities" are the first ten amendments to our constitutional bulwark that separates us from those totalitarian states we so regularly denounce.

For almost one hundred years<sup>3</sup> the Supreme Court of the United States has precluded federal courts from using illegally seized evidence obtained in violation of the Supreme Law of the Land. The Court does so with the practical knowledge and judicial experience that excluding the ill-gotten gains of police illegality is the only effective way to

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<sup>2</sup>*Brinegar v. United States*, 338 U.S. 160, 180-181 (1949).

<sup>3</sup>See: *Weeks v. United States*, 232 U.S. 383 (1914).

deter such misconduct. The Court also does so in its inherent power as the supreme guardian of the Constitution under our system of separation of powers and checks and balances<sup>4</sup> -- to insure against the sully of our criminal justice system by allowing those entrusted to *enforce* our laws to exploit their own illegality (that is, to guard against this sure-fire demolition of the Rule of Law and obliteration of citizen confidence in government institutions). As Justice Antonin Scalia more recently put it:

"[I]t is...immaterial that the intrusion was in aid of law enforcement. Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding...

Those who lose because of the lack of understanding that begot the present exercise in symbolism are not just the Customs Service employees, whose dignity is thus offended, but all of us -- who suffer a coarsening of our national manners that ultimately give the Fourth Amendment its content, and who become subject to the administration of federal officials whose respect for our privacy can hardly be greater than the small respect they have been taught to have for their own.<sup>5</sup>

Now, through the so-called "Exclusionary Rule Reform Act" (H.R. 666), Congress seeks to engraft a "good faith" exception to warrantless searches:

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<sup>4</sup>See: *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). See also: *The Federalist* No. 78 (Hamilton).

<sup>5</sup>*National Treasury Employees Union v. Van Raab*, 489 U.S. 656 (1989) (Scalia, J., dissenting).

**"Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment."**

This, despite the fact that the Supreme Court created the "good faith" exception in an effort to encourage police to seek search warrants and thereby interpose a neutral and detached judicial official between those engaged "in the often competitive enterprise of ferreting out crime"<sup>6</sup> and the citizen's right to privacy.<sup>7</sup>

The Senate version of this invitation to law enforcement abuse (S.3) is even more dangerous, *proposing to do away with the federal exclusionary rule altogether*, allowing the wholesale admission of illegally seizures into evidence in federal criminal trials:

**"Evidence obtained as a result of a search or seizure...shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution."**

With all the clamoring to reduce prisoner suits that crowd our court dockets, Senate Bill 3, nonetheless, proposes to give every inmate a \$30,000 lawsuit to enforce his or her right to privacy. So much for tort reform.

The problem is, we really do not have a problem in need of a "cure". Despite all the

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<sup>6</sup>*Johnson v. United States*, 333 U.S. 10 (1948).

<sup>7</sup>See: *United States v. Leon*, 468 U.S. 897 (1984).

hysteria that the exclusionary rule regularly releases dangerous offenders onto our streets when evidence is suppressed, a 1979 study by the U.S. Comptroller General found that suppression motions were granted in barely one per cent of federal prosecutions, and more recent studies indicate that suppression motions result in dismissal of federal criminal charges in only one-half of one per cent of all cases filed.<sup>8</sup> Given the small number of defendants who actually benefit from the federal "exclusionary rule" (and some of them I remind you may actually be *innocent*), it is foolish (and dangerous) to devote this kind of overkill to diluting our good citizens' privacy rights to cure an ill that does not exist.

More importantly, throwing our Constitutional rights at every perceived fear from drug abuse to violence in our schools and on our streets will not solve these complex social issues. Another reminder from Justice Scalia is worth repeating:

"[T]here is nothing new in the realization that the Constitution sometimes insulates the criminality of a few in order to protect the privacy of us all."<sup>9</sup>

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<sup>8</sup>See: Thomas Y. Davies, *A Hard Look at What we Know (and Still Need to Learn) About the "Costs" of the Exclusionary Rule*, 1983 Am.B.Found. Res.J. 611. See also: Office of Legal Policy, Report of the Attorney General on the Search and Seizure Exclusionary Rule (Feb. 26, 1986), published in 22 Mich.J.L. Ref. 600, 609, n.95 (1989).

<sup>9</sup>*Arizona v. Hicks*, 480 U.S. 421, 329 (1986).

## WACO: THE CRITICS' COMPLAINTS

Now, let us look at Waco.

Critics of the handling of the attempted search and subsequent siege at Mount Carmel complain with some justification of:

- Unnecessary use of paramilitary and "strike force" units and military hardware;
- Staging of "publicity raids" in an effort to improve tarnished public image and/or influence Congressional appropriation hearings;
- Abusive use of "no knock" and "dynamic entrance" into residences without justification, risking the lives of innocent citizens;<sup>10</sup>
- Improper use of deadly force;
- Use of unreliable "informants" without sufficient verification of their allegations, including the use of excessive and even "contingency" payments to informants (such payments give "informants" a perverse incentive to fabricate information, since payments are often contingent upon the government obtaining a conviction);
- The affidavit in support of the search warrant arguably omitted exculpatory information and misstated certain facts;
- The affidavit contained certain inflammatory and questionable assertions (e.g. child sexual abuse) over which federal agencies had no jurisdiction;
- Much of the probable cause offered in support of the search warrant was "stale" -- months, even years old when the application for warrant was filed;
- There was an apparent failure to explore less violent alternatives.

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<sup>10</sup>See: *Wilson v. Arkansas*, \_\_ U.S. \_\_ (1995), a very recent unanimous opinion authored by Justice Thomas, holding that the common law "knock and announce" requirement is embodied in the Fourth Amendment prohibition against unreasonable searches.

Why then were these issues not raised and preserved in the trial of the Branch Davidians? The truth is that contrary to popular belief, motions to suppress evidence on the grounds that such was illegally seized are very rarely granted, and would not likely have been granted in this case at the time of the "Branch Davidians" trial. Under current federal law, not all policy mistakes, abuses, or even regulatory, statutory or Constitutional violations will warrant suppression.

For example:

- Federal Courts will place their imprimatur upon a warrant search even though the warrant affidavit lacks "probable cause". *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) [officers' "good faith" reliance upon warrant issued by a magistrate].
- Federal Courts will not suppress evidence, even though it was illegally seized, where a particular defendant cannot demonstrate that he or she had a reasonable expectation of privacy in the place searched. *Rakas v. Illinois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978); *Rawlings v. Kentucky*, 449 U.S. 98, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980) [standing].
- Federal Courts will also not suppress illegally seized evidence where that evidence may have been "inevitably discovered", *Nix v. Williams*, 467 U.S. 431, 104 S.Ct.2501, 81 L.Ed.2d 377 (1984), or had an "independent source", *Murray v. United States*, 101 L.Ed.2d 472 (1988).

*Critics of these hearings* complain, also with some justification, that certain members seek to utilize these proceedings to take political advantage of the Administration, while ignoring more extensive investigation into the activities of private militia groups. Concern with the apparent increase of armed "militia" across this country indeed may be warranted. But the "Waco" experience should demonstrate that giving greater license to federal law enforcement is not the answer.



NACDL has long expressed concern about abusive law enforcement practices -- "Waco" representing but one instance. Our concerns pre-date the current Administration. Over the years, *for example*, NACDL has been at the forefront of calling attention to the following cases of such abusive practices:

- \* **The Case of Sina Brush.** Just after dawn on September 5, 1991, some 60 agents from DEA, the U.S. Forest Service, the BATF, and the National Guard -- complete with painted faces and camouflage and accompanied by another 20 or more National Guard troops with a light armored vehicle -- raided the homes of Sina Brush and two of her neighbors near Montainair, New Mexico. Hearing noises outside, Ms. Brush got up and was only half-way across the room when her door was kicked in by agents. Clad only in their underwear, Ms. Brush and her daughter were handcuffed and forced to kneel in terror in the middle of the room while agents searched the house. No drugs were found. The agents had obtained a warrant using 'information' furnished by an unreliable 'informant' and had entered Ms. Brush's home without even knocking.

- \* **The Case of Donald Carlson.** On August 25, 1992, just after midnight and as California Businessman Donald Carlson was sleeping, a group of DEA agents burst into his house in Poway, California. Thinking they were robbers, Mr. Carlson grabbed his pistol to defend himself. He also dialed 911 for help. The agents shot Mr. Carlson several times in his home (even while he lay wounded on the floor). He spent seven weeks in intensive care fighting for his life. It was later disclosed that the U.S. Customs Service, the DEA and the local U.S. Attorney's office in San Diego involved in the operation had relied on an informant who was notoriously untrustworthy, who had claimed Mr. Carlson's garage contained 2,500 kilograms of cocaine and four armed guards. The agents conducted the raid against Mr. Carlson despite the fact that they could see the informant's claims were false. (When Mr. Carlson returned home that evening, he opened his garage door with a remote control device, simultaneously illuminating the inside of the garage so the DEA agents conducting surveillance nearby could see.) No drugs were found.

- \* **The Case of Donald Scott.** On October 2, 1992, just before 9:00 a.m., 30 local, state and federal agents (including DEA and the Los Angeles Sheriff's Department) staged an assault on 61-year old Donald Scott's home in the

Santa Monica Mountains, near Malibu, California. The agents burst into the Scott home, to serve Mr. Scott with a search warrant enabling them to inspect the 200-acre Scott ranch for suspected cultivation of marijuana. Mr. Scott was shot and killed in front of his wife by a deputy sheriff. Although the agents claimed they were searching for marijuana plants, no such plants were found. The Border Patrol, which had participated in the investigatory work leading up to the raid, later claimed the search was for undocumented aliens. None were found. The Ventura County District Attorney investigated the case and concluded that the affidavits the law enforcement officers gave the judge in support of the warrant request contained misstatements and omissions which made the warrant invalid.

### **LESSONS FROM WACO: THE NEED FOR GREATER PROTECTION IN AN AGE OF INCREASINGLY SOPHISTICATED LAW ENFORCEMENT TECHNOLOGY**

While the Fourth Amendment had its roots in the colonists' fear of physical trespasses of King George's Redcoats, recent advances in the sophistication of electronic hardware pose an even greater need for viable protection of the citizen's privacy today.

There is an inverse relationship between the technology of surveillance and the citizens' right to privacy. As police technology increases, the citizen's reasonable expectation of privacy necessarily decreases. With the use of laser and computer enhanced infra-red technology, soon the authorities will be able to observe your most private activities from a distant location. The technology already exists to allow a listening audience to hear the quarterback's signals above the roar of the stadium crowd. Likewise, the authorities will soon be capable of eavesdropping upon our most private conversations, without the need for any wire intercept.

So in a time of increasingly sophisticated and more intrusive electronic invasions, rather than providing *less* protection for citizen's rights, Congress should be ensuring greater safeguards. Whatever our view of terrorism, the "drug problem", or violence on our streets, stripping the citizenry of two hundred years of civil liberties is not the solution. And beating the public into a frenzy – willing to toss its own protections aside, poses even greater dangers than the evil they seek to prevent.

What may appear to be innocuous incursions in the face of these perceived fears, have a cumulative impact.

"It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the Courts to be watchful for the Constitutional rights of the citizen, and to guard against any stealthy encroachments thereon. Their motto should be *obsta principiis*."<sup>11</sup>

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<sup>11</sup>*Boyd v. United States*, 116 U.S. 616, 635 (1886).

## A REAL CONCERN TO CONTROL ABUSES BY FEDERAL AUTHORITIES?

In 1989, then-Attorney General Richard Thornburgh issued a Memorandum, suggesting federal prosecutors are not subject to the ethical prohibition against communication with represented persons. This past year Attorney General Janet Reno codified same in the Code of Federal Regulations with the caveat that pursuant to newly created guidelines we could trust prosecutors to regulate themselves. Now Senate Bill 3 proposes to opt federal prosecutors out of *any and all* ethical rules of court, allowing them to make up their own rules.

### *"Sec. 502. CONDUCT OF FEDERAL PROSECUTORS.*

*Notwithstanding the ethical rules or the rules of the court of any State, Federal rules of conduct adopted by the Attorney General shall govern the conduct of prosecutions in the courts of the United States."* (emphasis supplied)

Certainly, any kid playing in the schoolyard understands that you cannot call a game fair where one side is allowed to unilaterally opt itself out of the rules designed to regulate the conduct of both sides, much less allowing them to make up their own rules as they go. That same Department of Justice advocating this advantage to itself continues to oppose the Federal Judicial Conference's proposed amendments to Rule 16 of the Federal Rules of Criminal Procedure, which would provide for the exchange of witness lists in criminal cases. How can we design to call a system fair that provides litigants in civil cases with pre-trial depositions, interrogatories, and requests for admissions when all that is at stake is the

almighty dollar, yet when a citizen's liberty or very life is at stake, we subject them to virtual trial by *ambush*, without even advance notice of the witnesses who will testify against them, much less what they will say?

#### NACDL CONCERNS

Abolishing or diluting the Fourth Amendment "exclusionary rule" would effectively remove any incentive for governmental agents to obtain warrants from judges before intruding into citizens' privacy or seizing their property.

"[T]he relaxation of Fourth Amendment standards seems a tempting, costless means of meeting the public's demand for better law enforcement. In the long run, however, we as a society pay a heavy price for such expediency. Once lost, such rights are difficult to recover."<sup>12</sup>

Failure to reform the civil asset forfeiture laws allows law enforcement agencies to continue taking from American citizens property that federal agencies allege to be crime-related, without even charging the citizens with a crime, requiring the citizen to bear the burden of proving their property "innocent", and then using the proceeds to amass police and paramilitary hardware. And exempting federal prosecutors from state ethical rules intended to regulate the conduct of all lawyers on both sides of the bar, will only further tilt

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<sup>12</sup>*United States v. Leon*, 468 U.S. 897 (1984).

an already uneven playing field.

Such measures cumulatively would have the effect of bringing about an unprecedented transfer of power from the judiciary to the executive branch of our government, specifically, police and prosecutors. Whatever one may feel about "judicial activism", the framers created the judicial branch as a bulwark against an overreaching executive. Measures that strengthen the hand of government while weakening the branch responsible for regulating that government's raw exercise of power constitute dangerous precedents.

### NEEDED REFORMS

NACDL urges Congress to draw from the tragic events surrounding the "Waco" siege the over-arching lesson that there must be rules in a land of laws (and the rules must be fair), even in the war against crime -- that there exists a need for systemic restraint and reforms within federal law enforcement, including the following:

- Establishment of standards to limit the extraordinary use of police force, including use of weapons, armored vehicles, and tactics that are more suited for military or paramilitary operations than civilian law enforcement;
- Establishment of meaningful limits on the use of "no knock" and "dynamic" entries;
- Complete disclosure of the types of military hardware and technology used in civilian law enforcement, and the regulations, safeguards and restrictions that exist with regard to their use;

- Promulgation of standards to prevent indiscriminate "raids", limiting them instead to instances when such measures are absolutely necessary, and then only in a manner minimizing confusion as to the identity of the "raiding" party;
- Implementation of requirements that U.S. Attorneys must review and approve application for warrants, and appropriately and consistently discipline those who file untruthful or unlawful applications;
- Assurance that hearsay is utilized in an affidavit seeking a warrant only if the actual witnesses are unavailable because of death or incapacity;
- Requiring that warrant affiants note all possible exculpatory evidence in their warrant application;
- Assurance that federal prosecutors are held to the same practice standards and rules of ethics as all other attorneys;
- Setting standards for limiting the time for which warrants, affidavits, and related items can be sealed prior to and after service, with limited periodic review if extensions are shown to be necessary;
- Establishment of a very high degree of supervision of "informant" activity, and guidelines for verifying informant claims when agents rely upon such claims for the issuance of warrants or as the basis for other enforcement operations;
- Establishment of an open discovery process unless there is shown to exist a compelling reason in a particular case why such government disclosure to the defense counsel is impossible or too dangerous;
- Opening to the public, government investigatory files and dispositions of citizen complaints against federal law enforcement personnel;
- Assurance that law enforcement officers who lie are appropriately and consistently disciplined.

## CONCLUSION

On behalf of the only professional organization whose sole role is to represent lawyers who defend citizens against just this kind of government abuse, I wish to thank the Subcommittees for providing me an opportunity to express the collective concern of the National Association of Criminal Defense Lawyers.

Three active members of our association, who speak with first hand knowledge of this tragedy, are scheduled to appear before the Subcommittees in the coming days. The fact that in the eyes of some very able defense counsel none of these issues even warranted challenge in Federal Court, gives solemn testament to the fact that we dare not further dilute the citizens' meager safeguards. If anything, the lesson to be learned from the tragic events of Waco is that how we choose to treat the least of us will ultimately determine how we can expect to be treated ourselves.

Gerald H. Goldstein, President



Mr. MCCOLLUM. Mr. Barr, your time is up.

Before we proceed further, I notice Mr. Barber has joined us at the witness table. You need to be sworn in, Mr. Barber. If you would stand and raise your right hand.

[Witness sworn.]

Mr. MCCOLLUM. You may be seated.

Let the record reflect the witness responded in the affirmative. I now yield 15 minutes to Mrs. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman.

At this time, I believe that all of you have testimony in front of you from Kiri Jewell. I am going to ask for part of my time for her to have the opportunity to read into the record her testimony and then we can proceed from there.

Kiri, welcome and thank you for being here. You may begin.

**STATEMENT OF KIRI JEWELL, RESIDENT AT MOUNT CARMEL,  
ACCOMPANIED BY HER FATHER DAVID JEWELL**

Ms. KIRI JEWELL. When my mother and I first joined David Koresh, he was still Vernon Howell and his group was living in a little two-bedroom house in San Bernardino, CA. I was 5 or 6. We lived with the group off and on there and in Pomona, CA; in Palestine and Waco, TX; and in LaVerne, CA.

When we joined, David was planning to lead the group to Israel to retake Jerusalem. He taught that there would be a big battle between the forces of the world and David and his people. The world would win and we would be killed but we'd come back in a cloud and smite the wicked and retake the world.

The details would change as David received more messages from God, but there was never a time when we didn't expect to be killed by the Feds, who David said were Babylon. While we waited for this to happen, we built up an army for David so the battle would be a big one and all the world would know the power of David and God. In the meantime, David was very strict about how we should live.

He only spanked me twice, though I knew he spanked other people or had them spanked. He personally spanked me because I said I was going on a diet when I was about 8 years old. He used the big wooden boat oar they used for adults, not the wooden spoon they called Little Helper. The second time David spanked me and the other kids, it involved getting candy from vending machines against his teachings. Before spanking us that time, he bought an enormous lot of candy and made us eat it till we were sick.

It was common for David to sleep in a bed with women and children. Sometimes I fell asleep in his room after a meeting or maybe I'd fall asleep on his bed watching MTV. I didn't even think about it, because the women and girls were all David's wives, or would be, and many of the kids were his, too. Even if he wasn't really our father, we were taught that he was our real father.

I have slept together with him and my mom and Lisa Ferris. I have slept with him and Ayesha Gyarfus. Ayesha was older than I was. She was probably 13 when I was 6 or 7. She became one of David's wives when she was 14 and had a baby for him. Once

she was pregnant, I never saw her. She was kept hidden because she wasn't an adult.

David took me on a motorcycle trip with some of the guys to Mount Baldy when I was about 7. On that trip, he took me for a ride down a mountain ski trail on the chair lift. There wasn't any snow, but it seemed like we could see the whole world. That was when David said to me personally that one day I would be one of his wives.

We all knew about sex because David talked about it a lot. He made us watch movies that show sex and war, like "Platoon" and "Hamburger Hill" over and over again. I was scared by the rape scene, but I would have been more scared to try to leave the room when he was there. We also watched "Miracle of Life" to see how babies were born.

David talked about having sex with his sister-in-law Michele Jones for the first time. She was young and scared. He said he got into bed with her and was trying to pull down her underwear while she was trying to keep it on. He said her heart was beating really fast.

He talked about how he liked Novelette Sinclair playing with his nipples and that Jeanine Bunds had the type of pussy that really held on to his dick. Those are completely his words, not mine.

I was in the meeting at the white house in California where he told Judy Schneider to stand up and asked the guys if any of them lusted after her. A few of them nodded. He told her to pull her skirt up. She pulled it up a little way and he told her to pull it higher. He told her "higher" several times before she got it up enough—

Mr. MCCOLLUM. I would like to interrupt the witness. I hate to do that, Kiri, but we just realized that your testimony has very graphic material, explicit material. You have very general audiences watching this and I just think they should be warned about that fact.

It is testimony of record. Your father is with you. You have been asked by a Member of Congress to read it. I think we need to be aware that you have a very wide television audience and this is not in any way censored, so this is just a fair warning to the general public. I will let the time be added.

Mr. ZELIFF. Can I ask Mrs. Thurman if you—since it is your witness, do you feel comfortable?

Mrs. THURMAN. Mr. Chairman, I have talked with Kiri about this and asked her if she felt comfortable in responding to this very same issue. She does. She wants the story out there. She feels compelled to tell this story. These are the words and what she heard and saw during the time that she was there. I agree that they are explicit, but I think that we also need to understand who we are dealing with.

Mr. BUYER. Would the gentlelady yield? I just—

Mrs. THURMAN. Excuse me. I believe we have a witness here who is 14 years old.

Mr. MCCOLLUM. I believe this is irregular. At this point in time, the questions have been asked, and the witness may proceed to give her testimony. I think we needed to put it on the record more for the home audience than anybody else, but nonetheless you may

proceed and I will add the additional minute or 2 that we have taken up for this discussion.

Kiri, please proceed.

Ms. KIRI JEWELL. Thank you.

He told her "higher" several times before she got it up enough. Then he asked the guys, "Now do you lust after her?" Then lots of them said yes loudly. Judy just seemed shocked and embarrassed, but like everybody else, she wanted to please David. You couldn't really think about not doing what he said.

My mom and Lisa and I went to Texas for Passover in 1991. David took the three of us to a motel. There were two chairs in the room and one bed that we all slept in. My mom and Lisa made soup in a crock pot. We were there for 2 or 3 days, just mostly hanging around the room. David preached to us. I sat on the floor playing with the shoelaces while he talked. We watched "Ernest Goes to Camp."

The cops came once and just sat outside. After my mom threw something in the trash, they checked the garbage. Then they went away. My mom and Lisa went to do a little shopping. I took a shower and then I was brushing my hair sitting in the chair and David told me to come and sit down by him in the bed.

I was wearing a long white T-shirt and panties. He kissed me and I just sat there, but then he laid me down. He took his penis and rubbed it on the outside of my vagina while he was still kissing me. I had known this would happen sometime, so I just laid there and stared at the ceiling. I didn't know how to kiss him back. Anyway, I was still kind of freaked out.

When he was finished, he told me to go take a shower. I walked to the bathroom with my panties down around my ankles. In the bathroom, I realized I was all wet and gooey on my legs. That freaked me out more. I just stayed in the shower for maybe an hour.

When I came out, David was in his jeans and the bed was made. He told me to come here again. This time he read to me from the "Song of Solomon." I was 10 years old when this happened. I remember sitting in the gas station wondering when he would do it again. I wasn't afraid but I was nervous. I knew I couldn't get pregnant because I hadn't started having periods yet.

This was soon before I left my mother for what turned out to be the last time. I didn't tell her about what David had done in the motel. Sometime later she asked—she said David's habit was to sleep with one of his wives, then leave them for a long time. I said, "Yeah, I know." She said, "What? Did he take you?" I just said, "Yeah." She wasn't mad or anything.

I asked my mom what would we do if we ever left here. She said, "We'll never leave, so why ask?" I never liked it there but I wouldn't leave my mother, so I figured I'd be there with her to the end.

The end meant the great battle between David and his people and the rest of the world. We were always waiting for and preparing for the Feds to come in. The people in the group didn't have to train for war, but if they didn't choose to, David would ask them why not.

Dana Okimoto and Janet McBean were in nursing and Janet said that maybe Jeanine, who was also a nurse, could and would provide cyanide so we could all commit suicide if it came down to it. It was also accepted that the best way to shoot yourself if necessary in this battle with Babylon was to put the gun in your mouth back to the soft spot above your throat before pulling the trigger.

When it was almost time for me to leave Michigan and go back home to my mom from my last visit to Michigan as a Davidian, my dad told me he had a court order for me to stay with him. I was shocked and scared.

My mom and Steve Schneider were on the phone to me telling me stuff like, remember little Esther, so I would remain true to David. She told me David had given beer to Rachel Sylvia, who was then 11 or 12 to soften her up. My mom said I needed to hurry up and get back or I would lose my place to Rachel. She told me, "It's time to fight. Are you ready?"

Mrs. THURMAN. Kiri, thank you.

[The prepared statement of Ms. Jewell follows:]

## PREPARED STATEMENT OF KIRI JEWELL, RESIDENT OF MOUNT CARMEL

When my mother and I first joined David Koresh, he was still Vernon Howell and his group was living in a little 2-bedroom house in San Bernardino, California. I was 5 or 6. We lived with the group off and on there, and in Pomona, California, in Palestine and Waco, Texas and in LaVerne, California. When we joined, David was planning to lead the group to Israel to retake Jerusalem. He taught that there would be a big battle between the forces of the world and David and his people. The world would win and we would be killed, but we'd come back in a cloud and smite the wicked and retake the world. The details would change as David received more messages from God, but there was never a time when we didn't expect to be killed by the feds, who David said were Babylon. While we waited for this to happen, we built up an army for David, so the battle would be a big one and all the world would know the power of David and God. In the meantime, David was very strict about how we should live.

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I have slept together with him and my mom and Lisa Ferris. I have slept with him and Ayesha Gyarfus. Ayesha was older than I was. She was probably 13 when I was 6 or 7. She became one of David's wives when she was 14 and had a baby for him. Once she was pregnant, I never saw her. She was kept hidden because she wasn't an adult.

David took me on a motorcycle trip with some of the guys to Mt. Baldy, when I was about 7. On that trip, he took me for a ride down a mountain ski trail on the chair lift. There wasn't any snow, but it seemed like we could see the whole world. That was when David said personally to me that one day I would be one of his wives.

We all knew about sex because David talked about it a lot. He made us watch movies that showed sex and war, like "Platoon" and "Hamburger Hill" over and over again. I was totally scared by the rape scene, but I would have been more scared to try to leave the room while he was there. We also watched "Miracle of Life" to see how babies were born.

David talked about having sex with his sister-in-law Michele Jones for the first time. She was young and scared. He said he got into bed with

her and was trying to pull down her underwear while she was trying to keep it on. He said her heart was beating really fast.

He talked about how he liked Novelette Sinclair playing with his nipples. He said Jeanine Bunds had the type of pussy that really held on to his dick.

I was in the meeting at the white house in California, where he told Judy Schneider to stand up and then asked the guys if any of them lusted after her. A few of them nodded. He told her to pull her skirt up. She pulled it up a little way and he told her to pull it higher. He told her "higher" several times before she got it up enough. Then he asked the guys, "Now do you lust after her?" Then lots of them said "Yes" loudly. Judy just seemed shocked and embarrassed, but like everybody else, she wanted to please David. You couldn't really think about not doing what he said to do.

My mom and Lisa and I went to Texas for Passover in 1991. David took the three of us to a motel. There were two chairs in the room, and one bed that we all slept in. Mom and Lisa made soup in a crock pot. We were there 2 or 3 days, just mostly hanging around the room. David preached to us. I sat on the floor playing with shoelaces while he talked. We watched "Earnest Goes to Camp." The cops came once and just sat outside. After my mom threw something in the trash, they checked the garbage. Then they went away. My mom and Lisa went to do a little shopping. I took a shower, then I was brushing my hair sitting in the chair and David told me to come sit down by him in the bed.

I was wearing a long white T-shirt and panties. He kissed me. I just sat there, but then he laid me down. He took his penis and rubbed it on the outside of my vagina, while he was still kissing me. I had known this would happen some time, so I just laid there and stared at the ceiling. I didn't know how to kiss him back. Anyway, I was kind of freaked out.

When he was finished, he told me to go take another shower. I walked to the bathroom with my panties down around my ankles. In the bathroom I realized it was all wet and gooey on my legs. That freaked me out more. I stayed in the shower for maybe an hour. When I came out, David was in his jeans and the bed was made. He told me to "Come here" again. This time he read to me from the Song of Solomon.

I was 10 years old when this happened. I remember sitting in the gas station wondering when he would do it again. I wasn't afraid, but I was nervous. I knew I wouldn't get pregnant because I hadn't started having periods yet.

This was soon before I left my mother, for what turned out to be the last time. I didn't tell her about what David had done in the motel. Some time later she said David's habit was to sleep with one of his wives, then leave them for a long time. I said, "Yeah, I know." She said, "What? Did he take you?" I just said, "Yeah." She wasn't mad or anything.

I asked my mom "What would we do if we ever left here?" She said "We'll never leave, so why ask?" I never liked it there, but I wouldn't leave my mother there, so I figured I'd be with her to the end. "The End" meant the great battle between David and his people and the



rest of the world. We were always waiting for and preparing for the feds to come in. The people in the group didn't have to train for war, but if they didn't choose to, David asked them why not.

Dana Okimoto and Janet McBean were in nursing and Janet said they and maybe Jeanine, who was also a nurse, could and would provide cyanide so we could all commit suicide if it came down to it. It was also accepted that the best way to shoot yourself if necessary in this battle with Babylon, was to put the gun into your mouth back to the soft spot above your throat before pulling the trigger.

When it was almost time for me to leave Michigan to go back to my mom from my last visit to Michigan as a Davidian, my dad told me he had a court order for me to stay with him. I was shocked and scared.

My mom and Steve Schneider were on the phone to me often, telling me stuff like "Remember Little Esther," so I would remain true to David. She told me David had given beer to Rachel Sylvia, who was then 11 or 12, to soften her up. Mom said I needed to hurry up and get back there or I would lose my place to Rachel. She told me, "It's time to fight. Are you ready?"

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Kiri Ehlise Jewell

July \_\_\_\_ 1995

Mrs. THURMAN. Let me ask you a couple of other—let me give you a few minutes. You want to get a drink of water? OK. Could somebody give her a drink of water, please?

Mr. Chairman, since we have a vote going on right now, could it be a possibility that we could go ahead and vote and let her have some time?

Mr. MCCOLLUM. I would be happy to do that. In fact we will add another minute or 2 back to your time and give you 10 minutes when you get back.

Mr. BARR. Mr. Chairman, could I inquire? I thought the time was up. How much time is remaining?

Mr. ZELIFF. She has about 8 minutes remaining on her time. The first clock went up, so it is about 8 minutes left on Mrs. Thurman's time.

At this point, apparently we have a second vote after this. This is the type of vote we had previously. We will recess until 5 minutes after the conclusion of the last of this series of votes.

[Recess.]

Mr. MCCOLLUM. This joint hearing will come to order. When we took a recess, we were in the middle of Mrs. Thurman's questioning.

Mrs. Thurman, you have 8 minutes left. I will turn the clock on. It runs for 5 of those 8 and then we will notify you as you get your 3 minutes down.

Mrs. Thurman.

Mrs. THURMAN. Kiri, let me ask you a couple of questions dealing with some of the issues that have surrounded this case. In February, it is my understanding that you were actually—or you went to Waco, actually before February 28; is that correct?

Ms. KIRI JEWELL. Yes.

Mrs. THURMAN. Do you want to tell me what happened when you talked to the—was it the ATF or the FBI that you actually talked to?

Ms. KIRI JEWELL. I don't know.

Mrs. THURMAN. OK. Would you like to just tell the panel what happened while you were there?

Ms. KIRI JEWELL. While I was there, I went to a courthouse, the same courthouse that I was in when George Roden, that whole thing with him was going on. It was that courthouse. And the only thing I really remember talking with them that stands out in my mind was they asked me about being molested and I told them everything that I told you.

And we—we—my dad and I and the agent that was with us drove around like pretty much all of Waco looking for the hotel or motel that I was molested in. And we couldn't find it because I really don't—it was dark when we got there and it was dark when we left, so I really didn't get a very good view of the outside of the motel. But that was pretty much all that we did when we were there.

Mrs. THURMAN. And then on February 28 when the raid took place, what did you tell your father about what you thought might happen there?

Ms. KIRI JEWELL. I told him there was no way that anybody was going to get out. They were—somehow they were all going to die.

Mrs. THURMAN. What makes you believe that?

Ms. KIRI JEWELL. He taught it. He told us from the beginning, from the beginning sometime we were all going to die and I didn't know when and I didn't know how, but I told my dad the day the raid happened none of us were—none of them were going to get out.

Mrs. THURMAN. And then you went on Donahue, I understand, and I believe that was March 10.

Ms. KIRI JEWELL. Yes.

Mrs. THURMAN. And what kind of questions were asked on there?

Ms. KIRI JEWELL. They asked a lot about the Star of David that everyone wore. They asked—

Mrs. THURMAN. What was the Star of David?

Ms. KIRI JEWELL. It was just a sign that you were in the group. I mean, that's all it was. A lot of people that—there have been a lot of rumors that it meant that you were a wife, but the men wore it, too, so it couldn't have meant you were a wife, I mean. But it was just signifying that you believed and that you were in it and—you know, it wasn't anything really about the wives because the men had them, so.

Mrs. THURMAN. OK.

Ms. KIRI JEWELL. On Donahue, I told Donahue and the audience that—that it was my belief that they were going to commit suicide and the cult expert that they had told me I was wrong. And I told him, "Watch."

Mrs. THURMAN. And then, Kiri, it is my understanding that your father actually sent a letter to President Clinton and I believe it was on March 28.

Have you had an opportunity to look at that letter?

Ms. KIRI JEWELL. Just briefly. My dad wrote it.

Mrs. THURMAN. And in it, it kind of based itself on the situations that I guess he and you had talked about. Have you and your dad had a lot of time to talk and converse about what happened there?

Ms. KIRI JEWELL. Yes.

Mrs. THURMAN. So that he kind of knew what was going on.

Ms. KIRI JEWELL. Yes.

Mrs. THURMAN. It might be, for our benefit, if it is OK, if we just put that letter into the record. I will be glad to have a copy of it. I just received it—

Mr. MCCOLLUM. Without objection.

Mrs. THURMAN [continuing]. It this morning.

[The information follows:]

**DAVID S. JEWELL**  
 324 Elm Street  
 Niles, Michigan 49120  
 (616) 684-6386

President Bill Clinton  
 The White House  
 1600 Pennsylvania Avenue  
 Washington, D.C. 20500

28 March, 1993

Dear Mr. President,

Four weeks ago today federal agents took necessary action against Vernon Howell/David Koresh at the compound known as Mount Carmel near Waco, Texas. That strike brought our nation's attention to focus on a group of people who have brought fear and revulsion to my family and me for several years.

One year to the day before the Bureau of Alcohol, Tobacco and Firearms attempted to serve warrants on Howell/Koresh, I won custody of my daughter, Kiri, from her mother Sherri Jewell, who was then a member of the cult and is now among those within the compound. Kiri, now twelve, had been raised under the cult's domination since she was five or six years old.

During the hearing, atrocities against children and adults alike were detailed under oath by former members who had been eye witnesses. Sexual assault, physical beatings, psychological torture, public humiliation and food deprivation were regularly inflicted on the followers at the hands or the bidding of the man now known as David Koresh.

Females, including children as young as twelve, were known to be taken by Howell/Koresh as his 'wives'. He would impregnate them as soon as possible with his 'holy seed'. Girls as young as thirteen have given birth to his children. My own daughter

told the authorities in Waco on February 22 of this year of how he had sexually assaulted her when she was ten years old. That attack stopped just short of actual penetration because she had not yet reached puberty. As such he felt she wasn't ready to be a 'complete wife'. This molestation was to be considered 'training'. Kiri's mother participated in the assault by delivering Kiri to him in a hotel room having full-knowledge of his intent.

Kiri recently described to me how she was taught by Howell/Koresh and other followers to commit suicide. "You put the gun in your mouth like this, Daddy. If you put it to the side of your head you might live. Either that or take cyanide, and Vernon has cyanide."

When I asked her why this was taught, she said that Howell/Koresh preached that they had to be martyred to gain salvation. The plan was to instigate an assault by the authorities in which they would be killed but, if "the Feds" could not be baited, Howell/Koresh and his followers would commit suicide.

The allegiance of the Davidians at Mount Carmel is total and unquestionable. I have no access to information that may have come from those who have been 'released' from the compound since the standoff occurred but I would wager that none has in any way faltered in his faithfulness to Koresh. It is my belief that those who have been sent out have not been 'released' but 'assigned' to some mission on his behalf. I have great fear for the welfare of my family and myself if any of them should be released from custody.

Prior to the assault, one ATF agent involved in the investigation (previously assigned to the protection of the Clinton family during the campaign year) told me that he considered Koresh to be a psychopathic genius. The fact that he plays a good game cannot be disputed.

Mr. President, I feel that Vernon Howell/David Koresh has placed you and the agents under your command in what amounts to a 'no win' situation. He has planned this for years and he knows full well that, politically, there is no 'right move' for authorities to make against him. If they attack, people on both sides will die and the authorities will be blamed. If authorities continue to stand back and wait, the public will grow weary and come to think of the federal forces as ineffectual. Stand back too long, and the Davidians will simply

resort to 'Plan B' - suicide, and then the authorities will be blamed for not stopping it.

There is no turning back for the Davidians now. They know that at the very least, their leader, if not all of them, will be charged with multiple counts of conspiracy to commit murder against a federal agent. They're not coming out.

I believe that each day the present situation is allowed to continue is a day that reinforces their commitment rather than one that weakens their resolve.

Kiri and I have had several long talks about how this crisis affects her and we have discussed her concerns for her mother. Her feeling is that the authorities should go in and stop this. She understands that it is likely that another assault would result in the deaths of many of her friends in the compound. Her response, "Daddy, it's better that some of them die than ALL of them!"

When asked about her fears for her mom, she says she'd rather see her die for something she really believes in than to go to jail for the rest of her life. That's a lot of wisdom for a twelve year old.

Howell/Moresh and his followers are using America's values to hold us all hostage. Those who are inside are there by choice. They have had ample opportunity to evaluate and provide for the safety of themselves and their children. Americans did not create this situation. It was designed by a pedophile with a Bible in one hand and a gun in the other.

Please, Mr. President, end it now.

Sincerely,

David G. Jewell

Mrs. THURMAN. In that letter, basically it talked about the allegiance and the possibility of them committing, I guess, suicide; nobody was going to get out of there but that the Government needed to do something at this point or we could even have a harder time.

Kiri, do you know of any other children of your age or maybe a little older that were put into the same situation that you were?

Ms. KIRI JEWELL. Michele Jones. Ayesha Gyrfus. There—Karen Doyle. There are—I know there are more but this is just like off the top of my head and I can't—it's not coming to me.

Mrs. THURMAN. And you said in your testimony that once they were pregnant, they were removed from the rest of the group; is that—

Ms. KIRI JEWELL. Not always. Actually, Ayesha was the only one that I was around when she was pregnant so—because I don't know about Michele when she had her babies. But when Ayesha was pregnant, I never saw her. She was kept inside her house.

Mrs. THURMAN. Do you know why?

Ms. KIRI JEWELL. Because it was Passover and there were a lot of people from all over coming and she didn't—she wasn't supposed to be seen pregnant because she was young.

Mrs. THURMAN. Kiri, tell me about the suicide stuff a little bit because you mentioned that at the end of your testimony about the cyanide and the gun. How did you know about that? I mean, was it taught to you? Did you just kind of know it? Can you explain that maybe a little bit to us?

Ms. KIRI JEWELL. It wasn't taught. It was known. Ever since I was little, I have been—I've had big ears and I like to learn, I like to observe and—and I heard. I observed. And it was known. I mean, I just didn't think up this stuff as a 14-year-old kid, you know. It was learned.

Mrs. THURMAN. This was your family?

Ms. KIRI JEWELL. Yes.

Mrs. THURMAN. I found it interesting in talking with you that you knew so many of the players in all of this. When I talked to you about the mailman, Mr. Jones, you just kind of responded as if you knew all about him.

Kiri, why do you think it is important that you gave the testimony that you gave today? These are your—

Ms. KIRI JEWELL. I don't think it's right that people are getting things out of this that they shouldn't be. People are hurting and they need to know the truth. This is my truth. It might not be somebody else's truth, but this is what I saw and this is what happened to me.

People are getting too much out of this that they don't deserve. They have not worked for any of it. They don't—it's not for them. They are making too much out of this than it should be. I—I just thought people should know what I saw.

Mrs. THURMAN. Thank you, Kiri. Thank you. I am through, Mr. Chairman.

Mr. MCCOLLUM. Well, thank you very much, Mrs. Thurman. You were almost right on the money anyway, without realizing it, I am sure, but thank you.

Thank you, Kiri. That was not an easy testimony but we really do appreciate it and understand it and appreciate what you have gone through. It is very, very difficult.

Mr. Schiff, 15 minutes for you. You are recognized.

Mr. SCHIFF. Thank you, Mr. Chairman.

Before beginning my questioning of this panel, I would like to explain what my point of view is going to be in these questions.

David Koresh has never been a hero to me. I think it is obvious that he broke laws. In my view, if he had surrendered at some point the greatest loss of life which did occur may well not have occurred. But the difference between David Koresh and the Department of Alcohol, Tobacco and Firearms and the Federal Bureau of Investigation is that David Koresh was not working for the Federal Government in 1993. But the FBI and the ATF were all Federal employees in 1993.

Now, the point is that Federal agencies like the Federal Bureau of Investigation and Alcohol, Tobacco and Firearms have an accountability to the Government and to the people at all times, no matter what kind of people that they are dealing with. So in my judgment, Mr. Koresh's personal practices, however despicable they obviously were, have nothing to do with a hearing on how the Bureau of Alcohol, Tobacco and Firearms handled a firearms' violation case.

I want to say to you, Kiri, personally that I am very sorry that you were not protected from David Koresh. I am sorry that you were not protected during this hearing because it could have been arranged that you testify with no cameras going if we had known, but I can only say to you that I am very glad that you weren't in that compound in February 1993, and later when it burned down.

With that, I would like to ask a question of Mr. McMahon, if I may.

#### **STATEMENT OF HENRY McMAHON, FIREARMS DEALER**

Mr. McMAHON. Yes, sir.

Mr. SCHIFF. Sir, it is my understanding that you are a firearms dealer; is that right?

Mr. McMAHON. Yes, sir.

Mr. SCHIFF. Could you tell us briefly where that is and for how long?

Mr. McMAHON. I started in Gulf Breeze, FL.

Mr. SCHIFF. Right at the scene, though, we are talking about.

Mr. MCCOLLUM. Would you move the microphone up closer, please? We are not able to hear you very well. Thank you.

Mr. SCHIFF. For how long in Waco, TX? I am sorry.

Mr. McMAHON. Two and a half years, 1991 to 1993.

Mr. SCHIFF. And you have a Federal firearms license?

Mr. McMAHON. I did, yes, sir.

Mr. SCHIFF. At the time, you did?

Mr. McMAHON. Yes, sir.

Mr. SCHIFF. And did you do business with David Koresh?

Mr. McMAHON. Yes, sir, I did.

Mr. SCHIFF. Did he purchase firearms from you?

Mr. McMAHON. Yes, sir, he did.

Mr. SCHIFF. Did you ever sell him any illegal firearms?



Mr. McMAHON. Illegal, no, sir.

Mr. SCHIFF. Did he ever say that he wanted illegal firearms?

Mr. McMAHON. No, sir.

Mr. SCHIFF. Did he ever say why he wanted firearms in the first place?

Mr. McMAHON. As an investment.

Mr. SCHIFF. How can one use firearms as an investment?

Mr. McMAHON. The guns that he was buying would go up in value, no question.

Mr. SCHIFF. Do you know other people who do that?

Mr. McMAHON. Yes, sir.

Mr. SCHIFF. It is not uncommon by itself?

Mr. McMAHON. No, sir, not by far.

Mr. SCHIFF. And did you have a visit specifically from ATF Special Agent Aguilera in June 1992 related to Mr. Koresh?

Mr. McMAHON. July 1992.

Mr. SCHIFF. July 1992?

Mr. McMAHON. Davey Aguilera and Jimmy R. Skinner.

Mr. SCHIFF. They were investigating Mr. Koresh at that time; is that right?

Mr. McMAHON. That is apparent now. It wasn't at that time.

Mr. SCHIFF. All right. But wasn't there a phone call between you and Mr. Koresh while the special agent was there?

Mr. McMAHON. Yes, sir.

Mr. SCHIFF. Would you briefly say what that conversation was about?

Mr. McMAHON. Yes, sir.

While ATF was there asking questions about David, they were asking questions, where did he get his money, what's he going to do with these guns, why does he need these guns. They were asking these types questions and these aren't compliance-type questions. And that's what they were there to do. They were there to do compliance. These aren't compliance check questions and so I was concerned that I was going to give them an answer that I shouldn't.

So I called David up and I told David that they were here asking these questions. And David said, "Well, if there's a problem tell them to come out here." I said, "Hang on." I walked back into my gun room. There was Davey Aguilera sitting down. Jimmy R. Skinner is standing up to the left. I go, "I got David Koresh on the phone." And Davey Aguilera, he jumps up and goes, "Don't call. Don't call." I go, "I got him on the phone." And he goes—so I looked at Mr. Skinner and I said, "Well, do y'all need to go out there, you know? He's going, if y'all got a problem, come out there." He's going, "We do not need to go out there at this time."

So I looked at Davey and I said, "Do you need to go out there? Is there anything that you need to ask him? Is there anything that you need to do?" He said no. So I told David that they did not need to come out there and I hung it up.

Mr. SCHIFF. So the special agent was directly invited by telephone to go out and see Mr. Koresh personally?

Mr. McMAHON. Yes, sir.

Mr. SCHIFF. OK. All right. Let me turn to Mr. Goldstein and Mr. Deschamps.

There has already been substantial discussion of the search warrant in this case and if there is time, I would like to go back to that, but before we do, I have a couple of other warrants that were issued and warrants holding up aren't as good a photo opportunity as an AK-47, I know, but they may be more important to this case. There was also a warrant for arrest against Mr. David Koresh, a criminal complaint to go along with that.

Have you two gentlemen seen all these documents? Mr. Goldstein.

**STATEMENT OF ROBERT DESCHAMPS, PRESIDENT, NATIONAL DISTRICT ATTORNEYS ASSOCIATION**

Mr. DESCHAMPS. I am Mr. Deschamps. I have seen the affidavits. I have not actually seen the warrant or the complaint.

Mr. SCHIFF. Mr. Goldstein.

Mr. GOLDSTEIN. I have been provided with a copy of the search warrant. I have not seen the affidavit for the arrest warrant.

Mr. SCHIFF. Well, let me tell you, the arrest warrant says that—it is an arrest warrant, *United States of America v. Vernon Wayne Howell*, also known as David Koresh. And it gives the number of the Western District of Texas and it charges him with the following crime, and I am reading now. It charges him with the lawful possession of a destructive device.

Have either of you ever heard of a crime called the lawful possession of a destructive device?

Mr. GOLDSTEIN. I would suggest that would not be a crime.

Mr. SCOTT. Mr. Chairman, does the gentleman have—

Mr. MCCOLLUM. Is there a parliamentary inquiry here?

Mr. SCOTT. Parliamentary inquiry. Does the gentleman have a complete copy of the warrant?

Mr. SCHIFF. As far as I know I do.

Mr. MCCOLLUM. Apparently he does. If you two want to refer to it, you can. But it is the gentleman's time.

Mr. SCOTT. I have a copy that says—the letter "N" is there. It looks like the "U" is not copied. So that it looks like it is "unlawful possession" on the copy I have.

Mr. MCCOLLUM. In other words, there is a reading of some of us that think that "unlawful possession" is actually printed on there.

Mr. SCHIFF. Let me go on, then. It is not on my copy, Mr. Chairman. It says "lawful possession."

Mr. MCCOLLUM. You have an additional minute added back to your time.

Mr. SCHIFF. Let me go on, then, to the statute number. Presumably—obviously, it meant to say "unlawful possession," but let me go to the statute number.

It says in violation of 26 U.S.C., section 5845(f). Are either of you gentlemen familiar with that particular section of the U.S. Code?

Mr. DESCHAMPS. I am not.

Mr. GOLDSTEIN. I've read that statute.

Mr. SCHIFF. All right. Are you aware that that section does not create a crime, it creates a definition of a destructive device and the actual crime of possession of that device illegally is 26 U.S. Code 5861?

Mr. GOLDSTEIN. You are correct. I believe the citation is to the definitional section of that statute.

Mr. SCHIFF. Now, my point is this, assuming I don't have a miscopied section there, that I have read the section of the Code properly there, I am making the point that isn't it rather sloppy law enforcement work to put the wrong section of a Code into a warrant for which somebody is about to be arrested?

Mr. Goldstein, or either one of you first.

Mr. GOLDSTEIN. No question, it's sloppy. I would suggest that day in and day out courts affirm arrests of individuals even though the citation to the Code is wrong, even if—convictions are even upheld when an indictment contains the wrong citation.

Mr. SCHIFF. I wasn't asking if it was legal. I was asking if it was sloppy.

Mr. GOLDSTEIN. Certainly sloppy.

Mr. SCHIFF. All right. Mr. Deschamps, do you have a response?

Mr. DESCHAMPS. Well, I would have to say it is sloppy although lots of times problems happen in transcription by secretaries and others and it happens all the time, as Mr. Goldstein has said.

Mr. SCHIFF. Well, what I am getting at is, that is practically the first document in this whole set of events, and I am suggesting that starting with the documents and point by point one can see that law enforcement at various times may have been doing a questionable job.

I would like to go back to the search warrant, if I may.

Mr. GOLDSTEIN. I would suggest that if they had spent as much time worrying about the warrant as they had in amassing military-type equipment to execute the warrant, they probably wouldn't have made those kinds of mistakes.

Mr. SCHIFF. Let's talk about the warrant a bit because you didn't have time to complete your statements when testifying before. Starting with Mr. Goldstein.

Do you have any specific observations of the warrant that you think are substandard? I am not raising the issue of is it probable cause, that is ultimately a legal determination, but is there anything that you personally question in that warrant?

Mr. GOLDSTEIN. I think I have stated that there's a lot of surplusage. There's a lot of inflammatory material in the warrant that, while it is terrible to read just like it was terrible to listen to, has little to do with Federal law enforcement and is certainly outside of the scope of the jurisdiction of the agency that was trying to get the warrant.

I would point out—

Mr. SCHIFF. Let me just stop you right there and just emphasize that. There is some rather graphic sexual testimony in the affidavit for the search warrant also?

Mr. GOLDSTEIN. Yes, there is.

Mr. SCHIFF. But the offense for which the search warrant is being drafted is a firearms offense?

Mr. GOLDSTEIN. No question. And the ATF wouldn't have any jurisdiction to enforce the child sexual laws or pornography laws or deviant sexual activity laws of the State of Texas.

Mr. SCHIFF. Mr. Jahn said that if you arrested Mr. Koresh, he was going to take DNA samples for some reason. Do you know for what Federal offense he was going to do that for?

Mr. GOLDSTEIN. As I understood Mr. Jahn's testimony, he said he was going to turn them over to the State authorities.

Mr. SCHIFF. Do you know if the State authorities asked for his assistance?

Mr. GOLDSTEIN. I do not. There's a nice deputy sheriff sitting next to me, but I haven't asked him.

Mr. SCHIFF. Let's go back to the warrant, then. That is something you read. Would you have some other specific examples with respect to use of informants, currentness of the information?

I will let either of you pick up wherever you wish on that. I just want to stress I am not trying to make a legal determination if probable cause still exists. What I am trying to get at was due care shown professionally in the drafting of this document.

Mr. DESCHAMPS. Let me respond to that, if I may, Congressman. The fact is officers who draw these applications tend to put in more information oftentimes than they necessarily need to simply because they want to make sure that they cover all the bases and there isn't any doubt that there is some irrelevant prejudicial material in this application.

But I think that it's common for officers to put that in in the hopes that they don't inadvertently leave something out that they should have put in. Better to add too much than not enough.

Mr. SCHIFF. How could sexual information possibly if left out have anything to do with the firearms charge?

Mr. DESCHAMPS. It couldn't. It's irrelevant.

Mr. SCHIFF. Even some of the firearms information, for example, there is a quote that is referred to at least once, I think twice, of a child who had been living in the compound who said, "I hope to grow up because then I can practice with long guns like adults."

Do either of you know of a Federal offense in practicing with long guns by adults?

Mr. GOLDSTEIN. It's not just that it's irrelevant, it's inflammatory. It wasn't mistakenly put in there. Someone intentionally put that in there in the hopes that that would move a judge, the person that issues the warrant.

The problem we all have is that the state of the law right now is that a judge will take—even if had you an outright lie that you could prove that they had perjured themselves on the affidavit, the judge would simply excise that out and you would redact it is what it is, redaction. And that's the problem that defense lawyers have out there and citizens who want to enforce these rights which are the way that we actually protect ourselves from unlawful government abuses.

Mr. SCHIFF. Let me point out the affidavit did mention, since it went into child abuse, that a child case worker from the State of Texas' Human Services Department went out to the compound. That person was allowed in the compound, wasn't restrained or shot in any way. Was that your understanding of the affidavit?

Mr. GOLDSTEIN. That is mine. And I would question both the resort to this kind of amassed military-like force when it does appear

that there were a number of other opportunities, but this is hindsight and second-guessing.

Mr. SCHIFF. Well, we have two things to start off. We have the fact that a Texas government official went out there and returned unmolested and we have at least a telephone invitation directly to Alcohol, Tobacco and Firearms to go out.

Mr. GOLDSTEIN. And it does appear that David Koresh had been out during that period of time and perhaps could have been apprehended without this, although that doesn't relate to the search of the premises.

Mr. SCHIFF. Speaking further on that, was there anything in this affidavit for the search warrant that indicated that exigent circumstances existed so that there had to be a no-knock entry? Did either of you see that?

Mr. GOLDSTEIN. No. But I can tell you this much, before, interestingly enough, Justice Thomas' unanimous opinion in *Wilson v. Arkansas*, you probably couldn't have found a defense lawyer out there that would have thought that the knock and announce provisions of the fourth amendment had any teeth in them. Quite frankly, there is nothing in there that——

Mr. SCHIFF. Did you see them even try to argue exigent circumstances in this affidavit?

Mr. GOLDSTEIN. Other than the argument that weaponry always presents some danger, there is nothing either addressed specifically to exigent circumstances nor is there a request for authorization to enter without knocking and announcing.

Mr. SCHIFF. Just to conclude, then, whenever there are firearms, there was potential danger, right, Mr. Goldstein, in a search?

Mr. GOLDSTEIN. No question.

Mr. SCHIFF. In most other searches, there are not dozens, if not a hundred, military trained ATF agents staging the raid either, right?

Mr. GOLDSTEIN. No question. It does appear they did not do much in the way of availing themselves of less intrusive opportunities, and it looks like they spent all of their time amassing military-type equipment to engage in this raid and perhaps even lied to State and Federal officers and officials to obtain that equipment.

Mr. SCHIFF. Thank you. No further questions, Mr. Chairman.

Mr. MCCOLLUM. Thank you very much, Mr. Schiff.

Mr. Schumer, you are recognized for 15 minutes.

Mr. SCHUMER. Thank you.

And I didn't intend to get off on this. Mr. Goldstein, what military-type equipment were used in the raid we are talking about? I don't know of a single instance.

Mr. GOLDSTEIN. The helicopters and other aircraft that would not normally be assigned to the police department. I would suggest that they are not military in the sense that they are unique to military. Here is what concerns me——

Mr. SCHUMER. Park Police, NYPD, I don't know out in Texas, all have helicopters.

Mr. GOLDSTEIN. They don't borrow them from the National Guard.

Mr. SCHUMER. What does that have to do with it?

Mr. GOLDSTEIN. Well, because it goes to what we're talking, the callousness or the concerns I think many of us have to irregularities. It does——

Mr. SCHUMER. Other than helicopters, was there any other military equipment used?

Mr. GOLDSTEIN. If you're suggesting that——

Mr. SCHUMER. I'm just asking a yes or no question, Counselor.

Mr. GOLDSTEIN. Yes, I think that we don't need——

Mr. SCHUMER. What was it?

Mr. GOLDSTEIN. I think the military style attire.

Mr. SCHUMER. You said lots of—oh, military style attire?

Mr. GOLDSTEIN. Yes, I think that—I have a concern——

Mr. SCHUMER. I finished this line of questioning. That's fine. Military style attire.

Mr. GOLDSTEIN. I think the Ninja masks, the black——

Mr. SCHUMER. Do you know, is that standard ATF procedure?

Mr. GOLDSTEIN. I think it is becoming more and more standard in not only ATF but law enforcement, even down to our local law enforcement. It's one of the things that I think defense lawyers are concerned about.

Mr. SCHUMER. Thank you, Mr. Goldstein. I'm not interested in your general views on what type of attire police and ATF ought to wear.

Mr. GOLDSTEIN. I think every law enforcement agency is——

Mr. SCHUMER. That's enough. I have a series of questions here. Just—you hadn't read the affidavit, and yet you were commenting on what happened there and led to the—led people to a conclusion there was all sorts of military types of things. And now we find out it's typical ATF uniforms and a helicopter.

Mr. GOLDSTEIN. I don't think Ninja——

Mr. SCHUMER. My question is now to Mr. Barber, and what I'd like to establish here, with you, Lieutenant Barber, is that the ATF just didn't pick this place out of the clear blue, that—and first let me just introduce you to the panel, that you are a member of the—you are a member of the McLennan County Sheriff's Office at the—during this time. Is that correct?

**STATEMENT OF LEWIS GENE BARBER, FORMER LIEUTENANT,  
McLENNAN COUNTY, TX, SHERIFF'S OFFICE**

Mr. BARBER. Yes, sir, that's correct.

Mr. SCHUMER. OK. When did you first become aware of the problems at the Branch Davidian compound?

Mr. BARBER. The first notification I had had nothing——

Mr. SCHUMER. If you can just pull the microphone closer. Thank you.

Mr. BARBER. The first notification that our department got involved with actually came through the Immigration and Naturalization Service.

Mr. SCHUMER. When was that?

Mr. BARBER. 1990. And this had to do with the possibility of illegal aliens being out there, having overstayed their visas, et cetera.

Mr. SCHUMER. Was there any knowledge about the 1987 shoot-out involving George Roden with your department?

Mr. BARBER. Oh, yes. I was one of the arresting officers that took Vernon and his people into custody that day.

Mr. SCHUMER. I see. And just in a thumbnail sketch, tell us what happened at that shoot-out, as best you know.

Mr. BARBER. I was the third vehicle to arrive, and at that time they had everyone in custody, and I was the weapons officer for our department. I made a weapons safe, cleared them, and the people were transported downtown, and then I conducted an inventory of the weapons and all the ammunition that they had.

Mr. SCHUMER. Right. And Koresh in that was charged with serious crimes, I believe, including attempted murder?

Mr. BARBER. Yes, sir, I believe so.

Mr. SCHUMER. And ended in a hung jury?

Mr. BARBER. Yes, sir, in his case; an acquittal on the others.

Mr. SCHUMER. Correct. OK.

Now, after that time, did you receive complaints about activities at the Branch Davidian compound? In particular, did you receive complaints about automatic weapons?

Mr. BARBER. Yes, sir. There was some people that lived close by, said that they thought they had heard automatic weapons fire there, and wanted us to check on it, and I said, well, we can't post someone out there.

Mr. SCHUMER. And these were neighbors complaining, hearing automatic weapon fire?

Mr. BARBER. Yes.

Mr. SCHUMER. Incidentally, we had asked—in general the process is fair, but we had asked that that gentleman would be a witness and were not allowed that witness—why, I'm not sure—the one who actually heard the automatic weapons fire, because he was a neighbor of Mr. Koresh. OK.

How about did you—did a UPS agent talk to you about other things that were delivered to the compound? Could you tell us a little about that?

Mr. BARBER. First of all, he talked to our chief deputy, Capt. Dan Weinberg, concerning the grenades.

Mr. SCHUMER. Well, you better tell us because—what was this with grenades?

Mr. BARBER. Seems like a box of mark 2 type pineapple grenades, if you will. The box had broken open somewhere in shipment with UPS, and that was reported to the captain, and he asked me if I had any knowledge of it. I said no. He said, "Well, you're also our bomb technician. I want you to work with UPS on this and just see what they are doing with them."

Mr. SCHUMER. So UPS came to you and said, "We've seen this; tell us if there's a problem?"

Mr. BARBER. Yes, sir, they came to the sheriff's department.

Mr. SCHUMER. Were you also aware of not only shipments of these grenade cases, which we've heard the only possible use is for paperweights from the other side, although I have never seen one used as a paperweight in my limited experience, and hear about shipments of materials that might be used in those grenades to make them explosive?

Mr. BARBER. Yes, sir.

Mr. SCHUMER. Could you tell us a little about that?

Mr. BARBER. One of the shipments consisted of aluminum powder.

Mr. SCHUMER. Aluminum powder, often used in grenades?

Mr. BARBER. Well, no, sir, not necessarily. It had to be mixed with other compounds.

Mr. SCHUMER. Magnesium.

Mr. BARBER. Magnesium and potassium nitrate.

Mr. SCHUMER. Right, OK. Let me ask you this. Why did you—you were the one, I presume, who called ATF and asked them to get involved. Is that correct?

Mr. BARBER. The captain called first, and then I was put over as liaison with ATF.

Mr. SCHUMER. OK. So the captain of the McLennan County Sheriff's Department called ATF?

Mr. BARBER. Yes, sir.

Mr. SCHUMER. ATF, just to underscore, did not come in on their own, they were called by local law enforcement?

Mr. BARBER. They were called in and asked to come in.

Mr. SCHUMER. Do you often call ATF on matters in your county?

Mr. BARBER. When we determined the extent of the shipments that were coming in from all over the United States, that was beyond our capabilities.

Mr. SCHUMER. Did you regard this as unusual and fairly serious, and is that why you called ATF?

Mr. BARBER. Apprehensive.

Mr. SCHUMER. You were apprehensive. And let me ask you this question, sir. Were the people in Waco worried about the compound? What was the general talk in the community?

Mr. BARBER. At that time there was none, not that I'm aware of. I don't live too terribly far from the compound, and the people out there just said, well, you know, the people are a little bit different, but that was it.

Mr. SCHUMER. Right. So what brought your apprehension were the shipments of various weapons, grenades, components, things like that?

Mr. BARBER. In conjunction with the prior occurrence in 1987.

Mr. SCHUMER. Right. And, again, it was the local government, not the Federal Government, that called ATF to the problem, ATF did not originate that?

Mr. BARBER. That's correct.

Mr. SCHUMER. OK. Thank you very much, Mr. Barber. We appreciate you coming a long way out here.

My next bunch of questions now is to Mr. Deschamps.

Am I pronouncing your name right?

Mr. DESCHAMPS. It's "Dayshaw."

Mr. SCHUMER. "Dayshom."

Mr. DESCHAMPS. You don't pronounce the—

Mr. SCHUMER. Well, you're from Missoula, MT; I'm from Brooklyn, NY.

Mr. DESCHAMPS. Close enough.

Mr. SCHUMER. I apologize for the discrepancy in pronunciation. But you are the president of the National District Attorneys Association as well as the DA for Missoula County, MT?

Mr. DESCHAMPS. That's correct.



Mr. SCHUMER. OK. As a district attorney from Missoula County, I presumed you prepared or reviewed a large number of warrant applications?

Mr. DESCHAMPS. Yes. In thinking about this, I think I prepared probably 5,000 arrest warrants and a couple thousand search warrants.

Mr. SCHUMER. OK. And have you reviewed the search and arrest warrants as well as the accompanying affidavits in this situation?

Mr. DESCHAMPS. I have.

Mr. SCHUMER. And let me ask you, based on your many years of experience, the 5,000 warrants that you have issued, do you believe there was sufficient probable cause for the magistrate, in this case Magistrate Green, to have issued the warrants to search the Branch Davidian compound and to arrest David Koresh?

Mr. DESCHAMPS. Absolutely.

Mr. SCHUMER. Explain "absolutely." This wasn't one of those little borderline cases, despite the huge amount of extraneous material, and despite certain erroneous material, sloppy material, as Mr. Goldstein described it in relation to Mr. Schiff's questioning. Is that correct?

Mr. DESCHAMPS. That's correct. Probable——

Mr. SCHUMER. This was not borderline?

Mr. DESCHAMPS. Probable cause simply means enough evidence to persuade a neutral and detached magistrate that the items sought are probably there, and I think any reasonable person reading this would say, beyond any question, the items sought were probably there.

Mr. SCHUMER. Right. Now, we heard Mr. Goldstein say that the standards are probably too loose or whatever else, and I'm sure there would be many more on my side who would generally agree with that than on the other side. But the law, the status of the law, would be quite clear that this would be—that this would clearly be within the ambit of the law, this search warrant?

Mr. DESCHAMPS. Yes.

Mr. SCHUMER. No doubt about that?

Mr. DESCHAMPS. No doubt in my mind.

Mr. SCHUMER. OK.

Mr. Goldstein, I want to continue on this, but my third point here is that at the criminal trial of the Branch Davidians who survived, some of the—they had excellent attorneys, and they didn't even mention——

Mr. GOLDSTEIN. Some of the best.

Mr. SCHUMER. Pardon?

Mr. GOLDSTEIN. Some of the best.

Mr. SCHUMER. Some of the best. You're familiar with people like Jack Zimmerman, Dick DeGuerin, and Tim Evans.

Mr. GOLDSTEIN. I grew up with them, know them. Some of them are in the room as we speak.

Mr. SCHUMER. Welcome, wherever you are.

And these are excellent attorneys?

Mr. GOLDSTEIN. First rate.

Mr. SCHUMER. OK. Now, I just want it clear for the record that at that trial, which would have been the logical place to challenge these warrants, that there was no such challenge.

Mr. GOLDSTEIN. Absolutely not.

Mr. SCHUMER. Wait, I'm not asking you the question, Mr. Goldstein. You're the witness from the other side. I want to ask our witness, Mr.—although you've been pretty good for our side, I don't deny that.

But in any case, Mr.—I'm sorry—Deschamps?

Mr. DESCHAMPS. Don't worry about it.

Mr. SCHUMER. OK, yes. What's his first—Robert—if I can call you Robert, you can call me Chuck.

Mr. DESCHAMPS. That's fine.

Mr. SCHUMER. OK. Wouldn't you find it—if there were some colorable doubt and there were excellent attorneys involved in the case, wouldn't you find it strange that they would not bring this issue up at the initial trial?

Mr. DESCHAMPS. I would find it strange. Generally speaking, they're going to throw everything but the kitchen sink in there hoping that, if there's even a chance, that they've got to raise it to preserve it for appeal.

Mr. SCHUMER. Right. And so the fact that these excellent, outstanding attorneys, in the words of Mr. Goldstein—who has known some of them since he was a child—didn't bring this up, would probably be far more dispositive of what is a good search warrant than you would think the author of a book or an expert on religion or a nonlawyer. Would that be a pretty good guess?

Mr. DESCHAMPS. I would say yes.

Mr. SCHUMER. OK. And finally—and we'll hear more about that later, but, again, I just want to underscore to everybody, a huge issue is the warrants.

Now one final point, and that is that it is indisputable that some 48 illegal automatic machineguns—you may not call them, I noticed in the dialog, Mr. Barr didn't want to refer to them as machineguns, although an automatic weapon can be, but let's just call them automatic weapons—and grenades were found there, so actually proved, Mr.—Robert—that the presumptions of Mr. Aguilera, that the probable cause that he sought, proved to be true in retrospect. Is that right?

Mr. DESCHAMPS. Absolutely.

Mr. SCHUMER. Not way off the deep end, for sure.

Mr. DESCHAMPS. No.

Mr. SCHUMER. Not just one weapon found, not just one grenade, but many, many weapons, and many, many handgrenades.

Mr. DESCHAMPS. That's true.

Mr. SCHUMER. And let me just ask you this, that the elements of the case, not only all the various—I heard somebody—Mr. Reavis, the learned attorney—talk about, well, the hacksaw analogy. But you also had a history of violence; you also had neighbors who had heard both rapid—automatic weapons fire, including somebody who was a former Marine who knew what automatic weapons fire was; you had an apocalyptic theory, plus a huge amount of weapons that brought Lieutenant Barber and the McLennan Sheriff's Department to do the unusual step of calling in the ATF. All of that together seems a pretty good case—

Mr. DESCHAMPS. I would think so.

Mr. SCHUMER [continuing]. In prospect, and in retrospect, 48 weapons, many handgrenades were found.

So would you take that case?

Mr. DESCHAMPS. I certainly would, yes.

Mr. SCHUMER. Yes. I mean it seems to me that this issue—there are some issues—and we'll get into some of those down the road—may be open to some dispute, but I think, and it seems pretty clear to me, that on the issue of the warrant, both in reality, 48 weapons, many handgrenades, both—and in prospect, lots of various evidence, it seems pretty clear that nobody did anything wrong at all, let alone in a conspiratorial way to get somebody.

Fair enough, Mr.—Robert?

Mr. DESCHAMPS. I think it is fair enough, and I guess in view of events of recent times. We——

Mr. SCHUMER. OK.

Mr. DESCHAMPS. We had a couple hundred pounds of high explosives in there that I think couldn't hardly be ignored, despite anything else.

Mr. SCHUMER. In fact, I can think of situations where, if the prosecuting authority, whether it be ATF, McLennan sheriff, or anybody else, had all this evidence and didn't look for a warrant, there would be outcries from everybody.

So a final question to you, Robert, and that is, even if, even if, the warrant were illegally executed, even if ATF could have found a better way to do it—and we'll get into that on the next panel, because remember, folks, this is a search warrant; you don't—and just maybe, Robert, you could just corroborate this from your experience. When you want to search a place, you don't usually go serve somebody or arrest them off the premises, since you don't want them to—don't want the place to have destroyed the evidence, you don't—right? Isn't that correct? The proper procedure when you do a search warrant is to serve it at the place you're searching?

Mr. DESCHAMPS. Absolutely. In fact, I think the law requires that you leave a copy at the place.

Mr. SCHUMER. Not when one's jogging or getting ice cream or visiting another place. You serve the place.

Mr. DESCHAMPS. That's right.

Mr. SCHUMER. And the proper response of a citizen, no matter how angry at the Federal Government, no matter what religious theory they might ascribe to, no matter how sloppy the search warrant is, is what, Robert? Is it to accept the warrant?

Mr. DESCHAMPS. Accept it and challenge it in court later.

Mr. SCHUMER. And you agree with that, Mr. Goldstein, I presume?

Mr. GOLDSTEIN. I would agree, and I think there's a reason why good lawyers would not challenge this warrant.

Mr. SCHUMER. OK. And I would say it certainly is not the correct thing to do, is to either threaten or shoot at those who seek to serve that warrant. Is that correct?

Mr. DESCHAMPS. That's correct. In fact, it's highly illegal to do that.

Mr. SCHUMER. Thank you, Robert.

Mr. McCOLLUM. Thank you, Mr. Schumer. Your time is up. And now we enter our 5-minute period of questioning. On the right side over here, the first 5-minute questioner is Mr. Blute.

You are recognized for 5 minutes.

Mr. BLUTE. Thank you very much, Mr. Chairman, and I want to thank all of the witnesses for their testimony. They've been here a long time, and we appreciate it, and I would like to get into something with Mr. Thibodeau, because it's our understanding that you can't be here later in the hearings to deal with the actual day of the raid.

Mr. THIBODEAU. After the 21st, I can be here any time you need me.

Mr. BLUTE. But you are not going to be here Friday; is that correct?

Mr. THIBODEAU. Yeah, that's correct.

Mr. BLUTE. Well, since you can't be here Friday, I would like to get your story into the record, if I could, because you're one of the witnesses who was actually there the day of the February raid, were you not?

Mr. THIBODEAU. Yes.

Mr. BLUTE. You were there. Could you take some minutes in describing what happened that day, what you saw happen, starting in the morning?

Mr. THIBODEAU. In the morning of that day, I was in the cafeteria area of the building eating breakfast, and I—after breakfast I took a walk down the hall. I got down to the hall, and David Koresh was sitting there with Robert Rodriguez, who we know to be the undercover agent now. Robert Rodriguez was sitting there talking with Dave, and he had been over quite a bit, I would say, on eight or nine separate occasions. So I didn't really think too much about this.

Now the night before this, the day before this, the Waco Tribune Herald had started to print the Sinful Messiah series, the seven-part series; so obviously there was concern over that; and, you know, David did kind of view that as the beginning of the end, but obviously we didn't know how soon this was going to take place.

Just really quick, if I may say, David's hope was still that the music would go forward. He wanted to get his message out through the music, and he was hoping that if this was an undercover agent, he always gave the gentleman the benefit of the doubt: He would see where Koresh was coming from, from another side, from the scriptural side, and perhaps go to his superiors and try to talk to them about this other aspect.

Mr. BLUTE. Did you have some sense that this person was an undercover agent yourself?

Mr. THIBODEAU. Yes, I did.

Mr. BLUTE. You had heard that in the compound?

Mr. THIBODEAU. Well, not so much heard it. Wayne Martin was really suspicious, and he checked him out. The thing that was kind—gave it away for me: I mean here are these guys; there's four or five of them living over in a two-room apartment; they have \$40,000 automobiles, Serengeti sunglasses, Rolex watches; they're coming over claiming to be college students. I guess the plot kind of thickens when they say that they're going to TSTC, which is a

technical college, you know; you go for maintenance, things like that.

And I asked Robert at one point, you know, just casually, because I spoke to Robert on a number of occasions; I said, you know, "Robert, what classes are you taking?" He said philosophy. And I basically thought that that was pretty funny, you know.

But anyway, Wayne Martin did—I guess he checked some license plates and found that they were registered to Dallas somewhere. It was Dallas or Houston, I'm not sure exactly. But the story just really didn't check out; and, you know, Wayne Martin was really paranoid over it; I remember him being nervous.

Mr. BLUTE. So it was a common suspicion in the compound that Rodriguez was not what he said he was—

Mr. THIBODEAU. Yes.

Mr. BLUTE [continuing]. From early on?

Mr. THIBODEAU. Yes.

Mr. BLUTE. Continue on that day.

Mr. THIBODEAU. David's whole attitude with that was, well, you know, even if he is working with the Government, even if he's with the National Guard, it doesn't matter; you know, I have a truth here that is being presented; it's going to be presented; and hopefully this person will see something that the other people from—you know, not having the experience of one-on-one with David, you cannot see. So that was the hope.

That day I saw them talking, I didn't think much of it, and I went back—

Mr. BLUTE. Let me just speed you up to the time of—where were you when the raid began?

Mr. THIBODEAU. I was in the cafeteria. I started to hear the helicopters coming from the back of the building. It was very faint.

Koresh came down the stairs. My recollection is that Koresh was not armed. There were some people around Koresh. There was, I would say, quite a few, five or six, and there was a lot of door slamming throughout the building at this point. It just seemed like a lot of action was taking place at once. And David held his hand up.

At this point there were people coming in from the other areas of the building. I wish I had a diagram. But they were coming in from where the dormitories were for the men. They came into the cafeteria area.

David held his hand up, and he said, now, OK, they're coming, they're on their way.

Mr. BLUTE. This was after the helicopter noise?

Mr. THIBODEAU. Yeah, this is—we can hear the helicopters; it's getting louder and louder.

Mr. BLUTE. When did you first see the—did you see the helicopter?

Mr. THIBODEAU. I did not see the helicopters personally, but they were very loud, they were very clear.

Mr. BLUTE. And we've heard testimony—I have to finish here—that the helicopters came a significant period of time before the raiding party. Is that your sense of what happened?

Mr. THIBODEAU. My sense of what happened from where I was is, after David Koresh made that statement, he said, "Don't do anything stupid. We want to talk to these people. We want to work it

out. That's what we're all about here at Mount Carmel." And I'll never forget those words, because I was really scared, and when I heard that, it was like, OK, David's going to try to talk to them, maybe this can still be avoided.

He went to the front door. Now from where I was in the cafeteria, it sounded to me like the shots were emulating from the front. OK.

Now, I talked to Renis Abraham later and a couple of the other survivors, Renis particularly, testimony was very strong.

I said, you know, Renis—this is considerably after, hours later, maybe even a couple days later. Time really was kind of like a tunnel-vision type thing. But I talked to Renis, and Renis said, you know—I said, "Renis, what did you think of all that firing just starting at the front door?" And Renis said it didn't. I said, "What do you mean?" He said, "I was outside and I saw the helicopters coming in, and I saw fire coming from the helicopters into the tower area, and it initiated with the helicopters firing." I said—

Mr. BLUTE. You didn't see that yourself—

Mr. THIBODEAU. No, I did not.

Mr. BLUTE [continuing]. But people there told you that on that day?

Mr. THIBODEAU. I said, "Renis, are you sure?" Because it didn't go with my experience. From what I heard, it sounded to me like the front door. He said, "I am positive." Which indicates to me that it was simultaneous, that you had the group at the front and the group at the back and the only way that could have occurred is if it all occurred together.

Mr. BLUTE. Mr. Chairman, I think this is very important testimony. Mr. Thibodeau has a statement outlining what he thinks and what he saw happen on that day, which I think is very important. I hope we can get this into the record.

Thank you, Mr. Chairman.

Mr. MCCOLLUM. Certainly any written testimony Mr. Thibodeau would like to make would be admitted in the record, without objection.

Mr. TAYLOR. Mr. Chairman, for a clarification.

Mr. MCCOLLUM. Yes, Mr. Taylor.

Mr. TAYLOR. Aren't we dealing with hearsay evidence, here? I'm not an attorney, but when someone is using secondhand testimony—

Mr. MCCOLLUM. Parliamentary inquiry is taken.

In court proceedings you might not be able to have hearsay in it, but in congressional hearings hearsay is admissible. There is nothing that prohibits that.

Mr. TAYLOR. Mr. Chairman, to continue my inquiry, will the record clearly indicate that this is secondhand testimony?

Mr. MCCOLLUM. Well, it obviously does. You've just made it that way.

Mr. TAYLOR. Thank you very much.

Mr. MCCOLLUM. Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Goldstein, I want to get away from the particulars of this case for a second and go into some generalities and ask you to explain how the—in your written testimony you go into the fourth

amendment, and I'd like you to say for a minute or so how the exclusionary rule protects innocent people from police misconduct.

Mr. GOLDSTEIN. The exclusionary rule is a judicially crafted rule that, in effect, precludes from the introduction into evidence any items or evidence that was obtained by the police illegally.

I think the general citizenry out there thinks that liberal courts are unleashing violent criminals on the citizenry to beat up on them. In actual fact, less than one-half of 1 percent of the citizens charged in this country ever benefit from a motion to suppress. But the theory is that by excluding illegally obtained evidence, evidence that law officers obtain in violation of the supreme law of the land, that that will deter them from engaging in that illegal conduct because they won't want to go out and obtain evidence illegally if they know they can't use it.

The importance is that while it only benefits one-half of 1 percent of those charged and many of them may be innocent, everyone benefits from it, because the general discouragement of illegal police activity protects you and me and the innocent citizens out there whose homes are not intruded upon. So it has a—it protects 100 percent of the innocent citizens and only benefits a small, infinitesimal percentage of those who may in fact be guilty.

Mr. SCOTT. If you have an allegation of police misconduct or illegal activity on the part of police in obtaining evidence prior to 1984, where, in the *Leon* case—what part of the judicial proceeding would you argue the case that it was—that the evidence was illegally obtained?

Mr. GOLDSTEIN. It would be at a pretrial motion, Mr. Scott, through a motion to suppress.

What's interesting, as Mr. Taylor has pointed out, hearsay evidence would be admissible at a suppression hearing. It wouldn't matter that there wasn't probable cause, because, in fact, according to *Leon*, after 1984 the—

Mr. SCOTT. That's before 1984.

Mr. GOLDSTEIN. Prior to that time—in fact, instances like this, these kinds of issues, would be viable prior to 1984.

Mr. SCOTT. After *Leon* and the good faith exception, how has it—how has your ability to challenge police misconduct been compromised?

Mr. GOLDSTEIN. That's what I wanted to answer to Mr. Schumer. No good defense lawyer with his head screwed on right is going to file a motion to suppress where there's a warrant simply because the officers are entitled to rely upon the warrant even if it's totally lacking in probable cause, and even if there's a lie, because in order to meet the standard of *Franks v. Delaware*, which is a hard standard to prove, you're going to have to prove in fact by sworn testimony that there's a lie before you can even call a witness, before you'll get a hearing, before you can ask a single question.

So what I'm going to ask is—nobody wants to hear this apparently—is if we're going to have anything out of this hearing that's going to regulate and control illegal police practices, what we need do is put some teeth back in the fourth amendment and give the citizenry some means of protecting themselves.

Mr. SCOTT. Let me get to the particulars of this case, Robert. If you could show—now I think in this case there's plenty of evidence

to support the search. You have got the USPS testimony, you've got statements from arms dealers of what had gone in, you've got statements from neighbors, you've got plenty there.

But if you could show that this warrant had been obtained by irrelevant, inflammatory, and unreliable evidence, what could an innocent person—if we're going to discourage searches of innocent people, how could any of the defendants in this case have brought up a challenge to the evidence?

Mr. DESCHAMPS. Frankly, I'm not sure that—I'm not sure that they—well, they could have brought up a motion to suppress. They certainly could have asked for a Franks hearing to show that if there are lies in there—and I don't see any, but suppose there were, that would be one remedy they have.

I have to disagree with Mr. Goldstein. It isn't an automatic silver platter that you get a judicially issued warrant if the officer himself knows; there's plenty of recent case law in this point.

Mr. SCOTT. Well, if the search—wait a minute; my time is almost up. If the searching officer didn't know about all the irregularities, how would they be able to bring this up in a hearing?

Mr. DESCHAMPS. Through a Franks hearing. To show that there were inappropriate, illegal lies, falsehoods, that led to the probable cause.

Mr. GOLDSTEIN. Which, in order to get that, you're going to have to be able to demonstrate that by sworn affidavit. How do you get that you haven't been able to call or ask or question a witness?

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Your time is up. Thank you.

Mr. Bryant, for 5 minutes.

Mr. BRYANT of Tennessee. Mr. Chairman, before my 5 minutes starts, I would ask unanimous consent to submit an opening statement for the record.

Mr. MCCOLLUM. It is granted, without objection.

Mr. BRYANT. Thank you.

[See p. 40.]

Mr. BRYANT of Tennessee. As a former U.S. attorney, I had a very positive experience with law enforcement in my area, with ATF and the FBI.

But I have some very grave concerns about the environment that existed in Waco in February 1993, that apparently compelled this raid to occur that day. As such, I wanted to ask just a few questions and maybe bounce around a little bit and tie up some loose ends.

Mr. Thibodeau, are you familiar with a Mark Breault?

Mr. THIBODEAU. Yes.

Mr. BRYANT of Tennessee. Does Mr. Breault have any physical impairment?

Mr. THIBODEAU. Yes, he has a significant sight impairment. My understanding, he's legally blind.

Mr. BRYANT of Tennessee. OK. I bring up Mr. Breault because, as a part of the basis for this search warrant, the agent affirms under oath that he interviewed Mr. Breault in Los Angeles, and that Mr. Breault indicated he actually shot weapons and performed guard duty with a loaded weapon.



Mr. THIBODEAU. He also used to tell stories about swimming for sharks and, you know, being—he used to tell some whoppers—let me put it that way—according to Steve Schneider and some of the other people that I used to speak to about Mr. Breault's experience in the past. You know, nothing bad or, you know, just that's—he was a kind of a storyteller, yeah, was the impression I had.

Mr. BRYANT of Tennessee. Thank you.

Again, as a former prosecutor, I don't mean to concede, and I certainly don't, that Mr. Koresh's actions were proper in his reaction to the service of this warrant. I think he had an obligation to respond lawfully and challenge it in the courts. I disagree totally with that action. But, as I said before, I am concerned about other issues from the other side.

Mr. McMahan, Mr. Koresh did go to gun shows and deal in firearms and grenades and paperweights and so forth; is that correct?

Mr. MCMAHON. I never saw any handgrenades, but I saw upper receivers, knives, accessories, magazines. I mean he had—you know, he went to gun shows and he advertised in them. Here's one of his business cards. I'm sure you've seen all these.

Mr. BRYANT of Tennessee. I would like to put that in the record, if I could.

[Material not received by time of printing.]

Mr. BRYANT of Tennessee. When I say handgrenade, I mean empty shells that are used on vests, and are you familiar with that practice of putting them on vests or using them as paperweights?

Mr. MCMAHON. Yes, I am. I'm really surprised that Mr. Schumer didn't say that before. I mean everybody's seen the pull pin complaint department, you know, pin No. 1. But that is a common practice at gun shows, yes, sir.

Mr. BRYANT of Tennessee. OK.

Deputy Barber, I understand you're retired now from the county sheriff's office?

Mr. BARBER. Yes, sir, that's correct.

Mr. BRYANT of Tennessee. And you were familiar with the Koresh people?

Mr. BARBER. To a degree, yes.

Mr. BRYANT of Tennessee. And were you consulted by the ATF before this raid occurred on February 28, 1993?

Mr. BARBER. Yes, I was.

Mr. BRYANT of Tennessee. Were you familiar with the fact that there were, as a part of the Davidians out there, what I understand to be a number of elderly people and a number of—obviously we know—at least 20 children? Did you know they were out there?

Mr. BARBER. Yes, I did.

Mr. BRYANT of Tennessee. Did you make this fact known to the ATF, or did they already know that?

Mr. BARBER. I feel they already knew that.

Mr. BRYANT of Tennessee. Let me ask you, if I could, were you familiar at all with—were you familiar with the fact that Mr. Koresh was dealing in guns at gun shows?

Mr. BARBER. I had not seen him at a gun show there in Waco. I had seen Paul Fatta.

Mr. BRYANT of Tennessee. Is it normally the practice of ATF to also monitor and attend these various gun shows, just as a practice?

Mr. BARBER. I can't tell you what their practices are.

Mr. BRYANT of Tennessee. OK.

Mr. Goldstein, let me follow up. I had understood before that you had expressed an opinion that, because of what you perceive as the misapplication of law to the facts of this case and the staleness, I don't think our fellow prosecutor talked about the staleness of this information, the age of it, and because of perhaps the lack of credibility on some of these witnesses who talked to the agent, that you had some grave concerns about the validity of that search warrant.

Mr. GOLDSTEIN. It is true, Mr. Bryant, I am concerned any time there's that kind of lapse of time between the date of the information and the date that the warrant is actually sought to be executed, because I think there's always a danger there that, even if it existed, it won't be there when they go. I was concerned—

Mr. BRYANT of Tennessee. Could I cut you off just a minute and ask one quick question back to Mr. Barber?

Do you know what occurred in February that compelled the ATF to go in that day on February 28, even when the element of surprise was lost—why they had to go in at that time?

Mr. BARBER. No, sir, I do not. I do know that the raid, as it's being referred to, was scheduled for the following Monday. I was aware of that.

Mr. BRYANT of Tennessee. And they moved it forward a week?

Mr. BARBER. And they moved it forward one day.

Mr. MCCOLLUM. Mr. Bryant, your—

Mr. BRYANT of Tennessee. Right, Sunday. Thank you.

Mr. MCCOLLUM. Your time has expired.

According to my list, Ms. Lofgren, you're next up for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

First, I'd like to thank Kiri for being here today, and tell her how proud I am of her to be here and to speak up. It's not easy for anybody, even a grown-up, to come and testify. And I think you're a pretty special young lady and you're doing something important for your country.

In reading and listening to you, you note that there were some other girls. Your written statement mentions a little Esther that your mother had mentioned and also Rachel. Were you aware that other little girls were being molested by Mr. Koresh?

Ms. KIRI JEWELL. Yeah.

Ms. LOFGREN. Did you know about that? And you probably don't know about this, although maybe you do and I'll ask a question.

There was a Dr. Perry, who I think will get into this later in the panel, who in March contacted the FBI and talked about some of the other little girls who had been involved and had been abused by Mr. Koresh. They reported to him information about wirings and explosions and things of that nature. Did you ever hear about guns or weapons or explosions, or did you know anything about that?

Ms. KIRI JEWELL. Yes, guns. I never saw any explosions. I remember one time I was in David's room above the kitchen. This was before they rebuilt the whole compound. But it was above the

kitchen, and he pulled out this gun that had to have been, I don't know—it was—it was huge, it was huge.

I mean I of course was like 8, so it probably was a little bit bigger, but it was huge. The—just the bullets itself had to have been like this big [indicating], nails that came like this on each side of the bullet to keep it together, just like—yes, on a chain, like rows and rows of them. And they were just coiled up in his drawers, yes, like Rambo. It was incredible, it was just—and he was proud of it. It was his toy. It was his little—it was his new toy that he had just gotten and he was showing it off.

Ms. LOFGREN. Now, in February you and your dad went and spoke to the Federal agents. What did you tell them? Do you remember what you said to them? Or maybe I misunderstood when you answered Karen Thurman earlier.

Ms. KIRI JEWELL. Which part?

Ms. LOFGREN. Did you in February go and speak to the Federal agents, either the FBI or ATF? Do you remember what you talked about with them?

Ms. KIRI JEWELL. About being molested; that's about what I remember; about the children there, who the children's father was; just that. It was mostly about the children.

Ms. LOFGREN. Now, this is—the deputy sheriff said the first call that they got had to do with the Immigration Service. Do you know anything about marriages or that could have been arranged by Mr. Koresh to avoid—

Ms. KIRI JEWELL. Yeah, they were.

Ms. LOFGREN [continuing]. The immigration laws?

Ms. KIRI JEWELL. They were arranged.

Ms. LOFGREN. Can you tell us anything?

Ms. KIRI JEWELL. Names?

Ms. LOFGREN. Well, I don't know if we need names, but can you tell us what you knew and how you knew it?

Ms. KIRI JEWELL. Like I said before, I listened and remembered. I could name right now at least five marriages that were arranged so that people could stay in the country, at least five.

Ms. LOFGREN. Now, you, thank God, were not in the compound on the day of the raid, but you mention in your statement that you were on the phone frequently with your mom and she was pointing out that you would lose your place to Rachel and that sort of thing.

The impression that you got from talking to your mother and what you saw when you were able to see things, how does that jibe with the statement that Mr. Thibodeau made that gives a more serene picture, that things would be settled peaceably?

What was your impression of what was going to happen, and why did you think, as you stated earlier, that it would end with no one coming out and with suicides?

Ms. KIRI JEWELL. Because it was always—there was always some sort of violence, not inside the compound, but the whole time you were there you were prepared to die, the whole time.

One time my mom picked me up from the library, I was probably 9, and she said, "Are you ready to go?" And I said, "Where?" She said, "To Israel; we're going to Jerusalem." And I said, "OK." I wasn't going to leave her. But she said, "OK. I just wanted to see

if you were ready to go." And you were always ready for something, always had the little scared something inside of you.

Ms. LOFGREN. Finally, the first panel of witnesses talked about this whole issue as a matter of religious freedom. Were you ever given a religious rationale for the molestation that was ongoing with the little girls in the complex? Was there a reason given?

Ms. KIRI JEWELL. The only thing I remember was that he would say that King David from the Bible would sleep with young virgins to keep him warm, and something about Psalms 45, I think it was, something in there justified all of what—all of the molestation.

I don't know, there could have been something else he found that justified it, but that was what I remember.

Mr. MCCOLLUM. Ms. Lofgren.

Ms. LOFGREN. Thank you, Kiri. Thank you for your bravery.

Mr. MCCOLLUM. Thank you. Your time is up, Ms. Lofgren.

I note from the minority's list that we had incorrectly let you have that time at that moment. Ms. Slaughter was supposed to get it. But I am told we're going to correct that, because Mr. Schumer is going to yield to Ms. Slaughter in a moment.

But where we are at this stage in the proceedings is the time where we have the ranking member and the chairman have their opportunity to question or to yield to somebody for asking questions, and I'm going to take my 5 minutes at this point in time, and then I will yield to Mr. Schumer, who I guess will yield to Ms. Slaughter. I want to ask Mr. Thibodeau a question.

You were there the day of the raid, and you were there all the way through the fire at the very end, were you not?

Mr. THIBODEAU. Yes, sir.

Mr. MCCOLLUM. Could you tell us anything about how the fire began?

Mr. THIBODEAU. Here is a couple—this is how I look at it, and I put this in the report. At around 12 o'clock, after being CS gassed the entire day, after having a black leather jacket on and seeing little white spots all over it that were absorbed in the jacket, finally I heard someone yell from the upstairs—can I prerequisite this for something that happened at 10:30 that I think is very important?

At 10:30 that day I was listening to the radio, and a news report came on. The news report was saying the Branch Davidian compound in Waco, TX, is being assaulted and Janet Reno has OKed a teargas plan.

To the credit of the FBI, they have not fired back when the Davidians on the inside had returned 80 to 200 gunshots against the CEV's.

All I want to say is, I was in a fairly central—I mean I was in the chapel area, and I had heard shots fired accidentally throughout the course of the 51 days, and you could hear them throughout the building, and I did not hear any shots that morning fired, and I was overwhelmed with joy at this point, after being gassed, that my friends were not firing at these tanks, because obviously the FBI were saying if you fire at us we're going to fire back, and not just CS canisters or ferret rounds.

So I remember being overwhelmed that my friends were not stupid enough to fire at a tank, because a 223 round wasn't going to penetrate it anyway.

Mr. MCCOLLUM. What about the fire?

Mr. THIBODEAU. OK. What I was saying is, to me that appeared like a setup, a setup for a massacre, and it greatly disturbed me. At that point I had lost all hope.

At 12 o'clock someone yelled from the upstairs that there was a fire. The front—I could not get to the front because of what the tanks had come in, the stairwell that was closest to the front, so I went to the stairwell in the back.

At this point—and I have some pictures available—the back of the gym was thoroughly destroyed. A tank went in and actually leveled the back of the gym area—if you're facing the gym, the right half of it.

So I went halfway up the stairwell, and I could see the door, but I couldn't get to it because there was this huge beam in front of me and debris everywhere.

However, David Koresh's room was on this side. I could put my elbow up on the floor of the second story. I climbed up. It took me quite some time to climb over the debris without getting cut.

I went to his—I went to his room and then to an adjacent room which was an office space. I got into that room. There was a catwalk that was leading over the rafters of the church area, say from here to here, which is the front of the building. This is the front of the building. I walked to the front.

When I got—we were still in the process of building Mount Carmel. I got to a blanket. I opened the blanket up. A big gust of smoke came at me. When that dissipated, I went to stick my head inside there because I'm thinking, the kids, thinking Serenity Sea Jones, I was thinking of Isaiah and Joseph, some of these kids that I've come to know and love, getting them into the bus, an underground bus that was buried, because I was under the impression that that was the plan.

I got up there. I open it after the smoke dissipates and goes to my head, and a wall of flame shoots down the hallway in front of my face down to the other end of the building. It was the loudest sound I've ever heard in my life. I'm a drummer, and it was very, very—it was incredibly loud. I could not hear anything else other than this flame.

Mr. MCCOLLUM. Well, do you know how the fire started? Did anybody tell you, or do you know personally how the fire started?

Mr. THIBODEAU. No.

Mr. MCCOLLUM. Was there any plan for the fire to be started that you heard?

Mr. THIBODEAU. No. You know, we heard—

Mr. MCCOLLUM. Fine.

I want to go to you very quickly, Mr. Barber: The box of grenades that came from UPS, those were dud grenades, not live, armed ones; is that correct?

Mr. BARBER. Yes, sir, they were practice grenades.

Mr. MCCOLLUM. Methamphetamine lab: Did you ever know anything about a methamphetamine lab out at the compound?

Mr. BARBER. There was a rumor of one prior to—

Mr. MCCOLLUM. Three or four years prior to that, right?

Mr. BARBER. Yes. This would have been back in probably 1987.

Mr. MCCOLLUM. But not current with the raid or current with the time Aguilera or the ATF were going after these folks, right?

Mr. BARBER. No.

Mr. MCCOLLUM. All right.

I want to ask a question of Mr. McMahon, very briefly.

In the book that Mr. Reavis has written, he talks about you having a relationship with David Koresh to sell guns or through the compound to have a refitting of guns or putting together a certain type of weapons, that you all had made an arrangement or an accommodation to sell the weapons over time.

Do you know anything about that? Do you know what I'm talking about?

Mr. MCMAHON. I think what he's referring to was, there was this deal that we did: I bought the frames, and he bought the upper receivers, and David put them together, and then I turned around and sold them. There was a total of five or six guns that I had sold that way.

Mr. MCCOLLUM. Was this an ongoing arrangement, or was this something that just happened once and it didn't happen again?

Mr. MCMAHON. It had just started when ATF came and did the compliance check, and I explained to them exactly what was going on. They said they had a problem with the excise tax. They said the excise tax had to be paid. I go: I don't know anything about this excise tax; and after they left we stopped doing it, we didn't do it any more.

All I sold was five or six guns, that was the only time.

Mr. MCCOLLUM. All right. Well, I thank you for those comments. Now I'm going to turn to Mr. Schumer.

I've had my 5 minutes. I gather you're going to yield yours to Ms. Slaughter, but you get the privilege of doing that.

Mr. SCHUMER. It's my pleasure to yield my 5 minutes to my friend, colleague, and able legislator, Ms. Slaughter of upstate New York.

Mr. MCCOLLUM. You're recognized for 5 minutes.

Ms. SLAUGHTER. Thank you very much.

Mr. Thibodeau, are you married?

Mr. THIBODEAU. No.

Ms. SLAUGHTER. Are you involved in a personal relationship, or have you been, with Mr. Koresh's sister-in-law, Michelle?

Mr. THIBODEAU. The personal relationship that you are referring to is, I had a large hand in taking care of Serenity Sea Jones and her other twin daughters.

Ms. SLAUGHTER. You lived together?

Mr. THIBODEAU. No, we did not live together. We lived in the same building. So, yeah, in a sense we lived together.

Ms. SLAUGHTER. Is she the same Michelle Jones that Mr. Koresh referred to as his favorite wife and she had been with him since she was 12 years old?

Mr. THIBODEAU. I have no knowledge of him referring to Michelle as his favorite wife.

Ms. SLAUGHTER. She has, I believe, three children.

Mr. THIBODEAU. Yes.

Ms. SLAUGHTER. How old are they?

Mr. THIBODEAU. Three, and the other ones were twins, approximately one.

Ms. SLAUGHTER. Are they children of Mr. Koresh?

Mr. THIBODEAU. Yes.

Ms. SLAUGHTER. And he admitted that?

Mr. THIBODEAU. Yes.

Ms. SLAUGHTER. All right. Mr. Thibodeau, did you live at Mount Carmel?

Mr. THIBODEAU. Yes, I did.

Ms. SLAUGHTER. You were there then on the day, February 28?

Mr. THIBODEAU. Yes.

Ms. SLAUGHTER. And the testimony that we have indicates that there was a 45-minute notice that the ATF was coming. Is that correct?

Mr. THIBODEAU. Well, I believe that some people had a majority of prior notice that—there was some kind of prior notice, but not everybody did. My example of that would be Winston Blake, who was found—

Ms. SLAUGHTER. Who?

Mr. THIBODEAU [continuing]. With a piece of french toast in his hand, laying on the ground.

Ms. SLAUGHTER. Tell me, where did this prior notice come from?

Mr. THIBODEAU. Prior notice; I believe that it came from David Jones, who was the mailman.

Ms. SLAUGHTER. David Jones, the mailman, told you that the ATF was coming in 45 minutes to serve a search warrant.

Mr. THIBODEAU. He did not tell me personally. Apparently he went up to the front, the foyer area, where David was with a group of people, and told Koresh.

Ms. SLAUGHTER. And you were there with Mr. Koresh?

Mr. THIBODEAU. No; I was in the back; I was in the cafeteria area.

Ms. SLAUGHTER. You were nowhere around Mr. Koresh at the time he was around the front door?

Mr. THIBODEAU. No, I was not; I was not.

Ms. SLAUGHTER. Is Mr. Jones a member of the Branch Davidians?

Mr. THIBODEAU. Yes. Well, see, again, I always considered myself a student of the Seven Seals. Branch Davidian is something that I really heard on February 28 when the ATF raided.

Ms. SLAUGHTER. But Mr. Jones was a member of your group?

Mr. THIBODEAU. Yes.

Ms. SLAUGHTER. Let me put it this way. Was that known to authorities, that Mr. Jones was a member of your group?

Mr. THIBODEAU. I would think that it would be. I mean he's the mailman in the community, and he spends a lot of time out there. He lived out there for some time. He did have a private residence.

Ms. SLAUGHTER. Do you have any idea where Mr. Jones got his information that the ATF was coming to serve search warrants?

Mr. THIBODEAU. From what I have read and been told is, it was from a news media truck that was at the other end of the property, down at the end of the Double E Ranch road, I believe it to be.

Ms. SLAUGHTER. A news media truck told Mr. Jones that the ATF was on its way, that what——

Mr. THIBODEAU. Well, the story that I heard—and, you know, this really got—David didn't really talk too much about it to me personally, but the story that I got from the news media—and I will say I take everything that I hear from the media with a grain of salt—that there was a news media truck down there and they were asking directions.

Ms. SLAUGHTER. I have another question I want answered before my time comes up. You knew Cyrus?

Mr. THIBODEAU. I'm sorry?

Ms. SLAUGHTER. Mr. Koresch's son, Cyrus?

Mr. THIBODEAU. Yes, I knew Cyrus.

Ms. SLAUGHTER. I believe he was the son of his legitimate wife, Rachel?

Mr. THIBODEAU. Yes, ma'am.

Ms. SLAUGHTER. Were you there when, at the age of 3, Cyrus was forced to sleep on the kitchen floor night after night without any food until he was too weak to eat?

Mr. THIBODEAU. No, I had not heard anything about that, and I really doubt the validity of that story.

Ms. SLAUGHTER. Do you know anything about Cyrus at that point being taken to a garage in Pomona, I believe, and kept in a garage overnight? There are witnesses who say they took him there. He was told by his father that there were huge rats in this building, and he was made to stay there alone, terrified, scared.

Mr. THIBODEAU. OK. Of course what you're referring to is the film that came out. I call it——

Ms. SLAUGHTER. I haven't seen any film at all.

Mr. THIBODEAU. There was a film.

Ms. SLAUGHTER. These were testimonies from witnesses who, including a man himself who took young Cyrus at the age of 3 out to spend overnight in a garage.

Mr. THIBODEAU. I came onto the scene in 1991. I believe these things, if they happened at all, happened prior to me coming on to the scene.

But I have never heard any talk about this occurring, and when I saw this ATF propaganda film, ma'am——

Ms. SLAUGHTER. Is it your testimony——

Mr. THIBODEAU [continuing]. I was very surprised.

Ms. SLAUGHTER. Is it your testimony, Mr. Thibodeau, that he did not spank children as young as 8 months until their bottoms bled?

Mr. THIBODEAU. No, he did not until their bottoms bled. He did spank his children when they were disobedient.

Ms. SLAUGHTER. Eight months old, Mr. Thibodeau?

Mr. THIBODEAU. I don't know about 8-month-old children being spanked.

Ms. SLAUGHTER. Mothers have testified to that, as you know.

Kiri, do you know anything about that? Were babies spanked at that compound, little babies?

Ms. KIRI JEWELL. Yes.

Ms. SLAUGHTER. Did you know Cyrus?

Ms. KIRI JEWELL. Yeah.



Ms. SLAUGHTER. What I said about Cyrus, is that true, to the best of your recollection?

Ms. KIRI JEWELL. I don't know.

Ms. SLAUGHTER. How small were the babies when they were spanked, and did you ever see any of those spankings?

Ms. KIRI JEWELL. Eight months old.

Ms. SLAUGHTER. And these babies were spanked with what?

Ms. KIRI JEWELL. Wooden paddle.

Ms. SLAUGHTER. Called?

Ms. KIRI JEWELL. Helper.

Ms. SLAUGHTER. Helper. And what reason would drive Mr. Koresh to spank an 8-month-old child?

Ms. KIRI JEWELL. I saw him spank—I don't know if he was 8 months old at the time, but I saw him spank Wisdom, who was Robin Brenz's son, countless numbers of times, because Wisdom didn't like him and Wisdom would run away, and he would call him back over and spank him, and then Wisdom would run away again, and he would call him over and spank him again, and then he would tell Robin to go spank him.

And Wisdom, he would sit Wisdom on his lap, and Wisdom would be sniffing and crying. Then he'd run away again and get spanked.

Ms. SLAUGHTER. Have you ever known of any occasion where Mr. Koresh kept a child from having food?

Mr. MCCOLLUM. Kiri can answer that question, Ms. Slaughter, but your time is up.

Ms. SLAUGHTER. It is. But if you'd answer that for me: Do you know if he punished by denying food for more than 1 day or several days at a time?

Ms. KIRI JEWELL. I don't know about that, no.

Ms. SLAUGHTER. Thank you very much.

Mr. MCCOLLUM. Mr. Zeliff, you are recognized for 5 minutes.

Mr. ZELIFF. Thank you.

Kiri, thank you for being here. I know it's been a long and difficult day. Just on the record, you were invited as the Democratic minority witness, and it was—you asked to be here by subpoena. Is that correct?

Ms. KIRI JEWELL. Yeah.

Mr. ZELIFF. And you needed the subpoena because it was needed so that your father could be with you?

Ms. KIRI JEWELL. Yeah.

Mr. ZELIFF. Is that the only reason you needed the subpoena?

Ms. KIRI JEWELL. Yeah. I didn't—I didn't need one.

Mr. ZELIFF. Thank you very much.

Mr. Goldstein, is it—is it possible or, on probable cause, is it possible that it becomes stale, and is it stale if it's 6 or 7 months old, and would a warrant be valid if probable cause was stale?

Mr. GOLDSTEIN. There are very few cases that actually deal with the issue of staleness, but there is a lot of rhetoric, a lot of dicta in cases, that suggests that staleness is certainly relevant to probable cause, and it goes to whether or not you would have a reasonable belief that whatever you have that causes you to believe items of evidence will be located at a particular site will still be there when you attempt to obtain the warrant and execute it.

Mr. ZELIFF. Thank you.

The warrant authorized a search of the entire premises of the 77-acre compound. All buildings were included in the scope of the search. This included all personal belongings of some 90 men, women, and children, besides the person named in the search warrant.

Given the crimes alleged to have occurred, is the warrant so overbroad as to be unconstitutional?

Mr. GOLDSTEIN. There are always those concerns, and I think this is one of the—if there's something healthy that comes out of these hearings, it would be that an evaluation of what we expect goes on during motions to suppress in criminal trials is not in fact what does.

The truth of the matter is that a warrant should be—the fourth amendment talks about a particular item in a particularized place. One would want particularity.

It would keep them, for example, where people were living, for example, in a college dormitory, from searching the entire building because of probable cause to be one errant student had violated the law.

On the other hand, I can tell you this from common experience, and I think you could talk to prosecutors and defense lawyers who would agree with me: The idea that we will prevail on motions to suppress because the probable cause is stale, or because the warrant is too broad because it allows the search of an entire building, where the distinction between rooms and residences is difficult to pinpoint, is foolhardy.

Quite frankly, that's one of the reasons why none of these good lawyers raised the issue. It simply in practice—we don't have any teeth in terms of being able to enforce these kinds of restrictions that I think, as your question points out, are needed.

We need to restrict law enforcement in terms of time. We need to restrict them in terms of place. That's not asking too much. And they're able to enforce the laws, I think, adequately with those kinds of restrictions.

Mr. ZELIFF. Thank you, Mr. Goldstein.

Mr. Thibodeau, tell us about finding Winston Blake dead.

Mr. THIBODEAU. When the raid initially occurred and the shooting started, I got down on the ground. I went into the dorm area I had mentioned earlier. I wish I had a diagram to show you. But I went down the hallway of the dorm to the end.

Actually, the first room I went into was the weight room, and I waited there for I would say between 5 and 10 minutes. Time is pretty irrelevant when you're being shot at.

Then Jimmy Riddle and Oliver Gyarfas, Jr., ran down the hall in front of me. They went to the underground bus area. They opened up the door, and they went down into it. That's when I followed suit behind them. I got downstairs, and Oliver Gyarfas, Jr., and myself and Jimmy Riddle were down there.

Jimmy went down the hallway into the tornado shelter that was being built. He started to walk around in the mud, and the agents could hear him from upstairs. They were yelling obscenities at him, telling him to come out, screaming at the top of their lungs obscenities. I think that Jimmy wanted to make sure they weren't going to come in and take us out that way.

Anyway, to make a long story short, after a period of, I would, say 20, 30 minutes, the—we went back upstairs just as the cease-fire was being established. Jimmy Riddle and Oliver Gyarfas, Jr., ran up the hallway. I was crawling still because there was some sporadic fire.

I came to the first room that was to my left, and water was pouring out of the bottom of this room, and, again, there was a door on there, there was a blanket on there. I opened up the blanket, and I looked in, and it was the area of the building where there's three water tanks on the outside. The middle water tank had been punctured a number of times as well as the glass.

The first thing I focused on was the glass that was shot out. My eyes were still adjusting from being in a dark place. I noticed water pouring out of the bullet holes onto the floor. I followed one of the streams down, and there was a body there. I couldn't tell who it was at first.

After a period of time, my eyes focused on the body, and I could see that it was a large lump. I made it out to be Winston Blake. I remember he had a red jacket on, and it was Winston, and the water was pouring down on to him, and there was a—there was a pile of blood by his head. He was not moving. I pretty much knew that Winston was dead and was not going to move.

I shut the curtain, and I went up the hallway trying to hold my breakfast in that morning.

Mr. ZELIFF. Quick last question: Mr. Thibodeau, on this—this handgrenade, this happens to be a paperweight. Is this similar to some of the things that you may have seen inside, this little paperweight here, this handgrenade?

Mr. THIBODEAU. Yeah, it looks similar.

Mr. ZELIFF. Is it possible that this handgrenade could be a paperweight?

Mr. THIBODEAU. Yeah, it is possible. I say that to the extent that if you put a sign on there that says, "Complaint Department, Pull Pin," then obviously it's a paperweight. It depends on what is inside the handgrenade that makes it active or not.

Mr. ZELIFF. So it is possible that—

Mr. THIBODEAU. It's also possible it could have been active.

Mr. ZELIFF [continuing]. This was not a handgrenade or used for the intended purpose of a handgrenade?

Mr. THIBODEAU. It's possible either way, sir.

Mr. ZELIFF. This could be a paperweight that is not dangerous. It is just used to hold papers down.

Mr. THIBODEAU. Yes.

Mr. MCCOLLUM. Mr. Zeliff, your time is up.

Mr. ZELIFF. Thank you very much.

Mr. MCCOLLUM. Mrs. Thurman, 5 minutes.

Mrs. THURMAN. Thank you, Mr. Chairman. At this time I would like to yield my time to the distinguished gentleman from Mississippi, Mr. Taylor.

Mr. MCCOLLUM. Mr. Taylor, you are recognized for the 5 minutes.

Mr. TAYLOR. Mr. Jewell, like some other members of this body, I was a bit disturbed by some of the graphic things your daughter had to say. But having said that, I think it is also very fair that

you be given an opportunity to tell this body about your experiences in going to court in Michigan to prevent your daughter from being held in custody by David Koresh, the events that again—why don't you tell this committee some of the things that you know that were going on that the Michigan court agreed with when they decided to keep your daughter from ever being in the presence of David Koresh.

Mr. DAVID JEWELL. I wasn't expecting to speak today so this catches me a bit off guard.

Mr. MCCOLLUM. I don't believe that he has been sworn in. I'll be very glad to do that, Mr. Taylor, and won't do it on your time.

[Witness sworn.]

Mr. MCCOLLUM. The record will reflect the answer as affirmative. You may be seated.

Mr. Taylor, you have 4¾ minutes or something like that.

Mr. DAVID JEWELL. In the process—

Mr. SOUDER. Mr. Chairman, I have a parliamentary inquiry.

Mr. MCCOLLUM. Parliamentary inquiry. Please state it, Mr. Souder.

Mr. SOUDER. Will other people be added without notice and can other people bring in witnesses?

Mr. MCCOLLUM. Normally, that would not be the case, but I believe under these circumstances with the father of the young woman here, it's appropriate.

Mr. SOUDER. I understand it is extraordinary. I would just like to know the procedure.

Mr. MCCOLLUM. Normally, we would not. We have got a schedule. We print them. We publish them. It's a good inquiry, but you are correct.

Mr. TAYLOR. Mr. Jewell, I hate to interrupt, but the point I'm trying to make is the same point I made at the beginning of this hearing.

I think if you operate in a vacuum leading to the date of February 28, you can jump to the wrong conclusions as to what the role of this Nation and those people hired by this Nation to enforce this Nation's laws could have taken place.

Do you, who are the most familiar with what happened to your daughter and what you tried to prevent from continuing to happen to your daughter—don't you think this body needs to know what went on at that compound prior to February 28?

Mr. DAVID JEWELL. Absolutely, sir.

Mr. TAYLOR. May I turn to Mr. Barber, a local law enforcement agent who turned and asked the ATF to augment the efforts of your agency.

Do you feel like the law was being broken on a regular basis at that compound prior to your calling in the ATF to help out your agency?

Mr. BARBER. We had a lot of accusations and suspicions, but we did not have probable cause on anything at that time.

Mr. TAYLOR. Then, Mr. Barber, may I ask why did you contact the ATF?

Mr. BARBER. My primary concern was the handgrenades.

Mr. TAYLOR. Mr. Jewell, if I may return to you, would you please inform this committee of some of the things that you brought to the

Michigan court's attention when that court ruled that your daughter could no longer be brought in the presence of David Koresh?

Mr. DAVID JEWELL. On or about the morning of Halloween in, I believe it was 1991—and again I'm speaking somewhat impromptu here, so my dates may be somewhat shuffled—I received a call very early in the morning, and it was from Mr. Marc Breault, whose name was raised earlier. He identified himself to me and he said, Mr. Jewell, I have nothing I can give you that would make you have a reason to believe me, but I hope you will.

He said, Do you know a Sherri Jewell, because he wasn't even sure that he had contacted the right person.

I said, Yes, she's my former wife.

And your daughter is Kiri? I said, yes.

He said, sir, I have reason to believe that your daughter is in danger. And at that point he had my full attention. He began to tell me about the fact that he was a former member and that he in fact had been placed fairly highly in the hierarchy of David Koresh's organization. He began to tell me who David Koresh was and what he was and what he was intending to do, not just with my daughter.

I learned at that point that David Koresh intended to take my then 9-year-old daughter as his—maybe 10-year-old daughter—as his wife, but that he also had plans to destroy the Earth. And I must say that I feel a little uneasy using that phrase in the Chambers of the U.S. Congress because it seems so preposterous. But if you believe it, it's not preposterous.

The David Koresh that I came to know of and who I spoke with twice on the telephone was a man of absolutely unparalleled evil intent. It was his plan to bring about any circumstances necessary that would start a war between he and his followers and the rest of the world.

Over a period of years prior to my conversation with David Koresh—with Marc Breault, excuse me—I had had information that would come to me slowly and in little bits and pieces from—from my former wife, Sherri Jewell, who died in that fire, and from my daughter about what it was they were studying and what they believed and the things that were going to happen.

And I heard about wars that they were going to be involved in that would cause literal rivers of blood, and I heard about friends supposedly being told that if they didn't come and join the group, that they would be killed. I have sworn affidavits in the possession of my attorney that refer to the remarks that Ms. Slaughter was making earlier about babies being beaten at the age of 8 months old until their buttocks bled; and I don't refer to one affidavit, I refer to several.

I have testimony about women being held captive for months at a time and being systematically raped and demoralized to a point where they would then consent to the will of David Koresh and/or his henchmen.

David Koresh perhaps truly believed that he was the incarnation of some deity or some power, but it was not heavenly.

Mr. MCCOLLUM. Mr. Taylor, your time has expired.

Mr. TAYLOR. Mr. Chairman, if I may. I have two requests that I think are very pertinent. No. 1, since Mr. Jewell's time was very

limited, I would request that the testimony involved in the trial in Michigan, where he sought custody of his child and to defend his child from falling into the hands of David Koresh, that be included in this testimony.

Mr. MCCOLLUM. If you could provide it, it will be done without objection.

[The material referred to above is in the subcommittees' files.]

Mr. TAYLOR. Second, Mr. Chairman, I have an opening statement that I would like to include in the record.

Mr. MCCOLLUM. Without objection, it's so included.

[The prepared statement of Mr. Taylor follows:]

PREPARED STATEMENT OF HON. GENE TAYLOR, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF MISSISSIPPI

I am a member of the NRA. I own a semi-automatic weapon. And I voted against the Brady Bill and the so-called assault weapons ban.

As a child I lived next door to the Hancock County Sheriff. My best friend and my oldest child's Godfather is a career police officer.

Every year at Christmas mass I worship in the same church as two brothers from Bay St. Louis. And every year at that mass my thoughts turn to the sadness that must dwell in their hearts. You see, one Christmas morning nearly 30 years ago, when David and Mike Kenny were small boys, they lost their father.

He was a Mississippi Highway patrolman who was killed by a drunk driver while on duty. Now, three decades later, David is a Mississippi Highway patrolman. Every day he and his comrades protect families like mine.

For these and many other reasons I have to admit that I have a prejudice on behalf of our law enforcement community.

I was appalled as a teenager in the 60's when hippies routinely referred to policemen as "pigs." I'm equally appalled today when people who should know better refer to law enforcement personnel as "jack booted thugs."

I am equally angry when I look at the witness list prepared by the chairmen that apparently ignored all the facts that led up to the murder of four people who were sworn to enforce the laws passed by this Congress.

You see, I don't claim to have all the answers—and therefore look forward to getting them. But if the truth be told, I can draw only one conclusion from the list of witnesses:

Our chairmen aren't willing to give those four dead ATF agents, and the twenty more who were wounded the *same rights* that the criminal scum of our nation are given every time they enter a courtroom to be charged with murder, rape or the distribution of drugs.

Apparently our chairmen don't think that the law enforcement personnel *deserve the right to be presumed innocent until proven guilty*.

I think that if this committee has a shred of fairness and decency, and want to know the *whole* truth, then we have an obligation to subpoena the authors of the newspaper series, "The Sinful Messiah," Mark England and Darlene McCormick.

We should subpoena a series of articles in the *Waco-Tribune Herald* that detailed the lawless and perverted mentality of Vernon Howell, also known as David Koresh.

We should subpoena Chief Deputy Sheriff Daniel Weyenberg of the McLennan County Sheriff's Department, the first to call the ATF.

This committee needs to know the truth about the allegations of illegal aliens, molestation, and the "hit list" supposedly compiled to silence his enemies and former cult members.

This committee needs to know these things that led to the decision to search the compound. And we need to know about the apparent danger that those people who serve our country and enforce its laws faced when they made the decisions leading to the events of February 28.

Mr. MCCOLLUM. Mr. Hyde, you are recognized for 5 minutes.

Mr. HYDE. I thank you, and I'm pleased to yield my 5 minutes to Mr. Schiff.

Mr. SCHIFF. I thank the chairman of the committee for yielding. I would like to take a moment, Mr. Chairman, to put in focus a couple of important issues here.

First of all, just as the Alcohol, Tobacco and Firearms investigation and raid never involved Mr. Koresh's personal practices, however outrageous they were, with girls the age of Kiri Jewell, they never involved an allegation of child abuse in spanking young infants, which, of course, would be equally outrageous if, in fact, it occurred.

The Alcohol, Tobacco and Firearms search warrant and arrest warrant dealt exclusively with firearms violations. And I would ask my colleagues who are listening here today to decide if the other information that is constantly dumped into the middle of this hearing is relevant to the issues we must ultimately arrive at here.

Second of all, I would like to focus on the search warrant. I'm not going to ask further academic questions about the search warrant, but I want to make the point that I think its relevancy to this hearing has been missed. In my mind, its relevancy to this hearing is not whether it legally established probable cause. I think it's possible that it did. But I think there are other aspects of the search warrant which are more relevant to what we are studying today, which is the activities of Federal law enforcement agencies in this situation.

And those other aspects are, first, it was put together, as a number of witnesses have testified, in a prejudicial and inflammatory manner; and second, by the fact that no matter whose copy of the name of the offense is correct, it clearly misstates the U.S. Code statute number for the offense charged and, I think, makes other technical mistakes in the law, which means to me it was put together in a sloppy fashion.

Now, you put together "inflammatory" with "sloppy," that translates to me that ATF was in a hurry to make a big splash with something. And I think that if that is true—and we have 7½ more days to determine that, I think if that is true, that is substandard performance. We will hear from them and they will have a chance to explain.

With that, I would like to use the balance of my 5 minutes to ask a few further questions.

Deputy Barber, during the course of this investigation I assume you met a number of ATF personnel?

Mr. BARBER. That's correct.

Mr. SCHIFF. Did you meet any of their public relations people who came to the scene before the raid?

Mr. BARBER. Yes, I believe one—I think her first name was Sharon Wheeler.

Mr. SCHIFF. Right. I believe she's in public relations for ATF?

Mr. BARBER. Yes, I knew that.

Mr. SCHIFF. And they brought her there before the raid, I believe?

Mr. BARBER. I met her the day of the raid.

Mr. SCHIFF. The day of?

Mr. BARBER. The day of, yes.

Mr. SCHIFF. Do you know when she arrived?

Mr. BARBER. No, I don't.

Mr. SCHIFF. Let me turn now to Mr. McMahon.

Mr. McMahon, when you did business with Mr. Koresh in firearms, where did you do business?

Mr. MCMAHON. I sold him some guns from my home. My licensed premise was my home.

Mr. SCHIFF. Your licensed premises was your home?

Mr. MCMAHON. Yes, sir.

Mr. SCHIFF. You didn't live on the Branch Davidian compound?

Mr. MCMAHON. No, sir.

Mr. SCHIFF. So he came to your home?

Mr. MCMAHON. Sometimes. Sometimes I would go out there and see him.

Mr. SCHIFF. But he would be willing to come to your home?

Mr. MCMAHON. Sure.

Mr. SCHIFF. Did he come to your home regularly?

Mr. MCMAHON. Maybe once every 3 or 4 months or so.

Mr. SCHIFF. OK. Let me turn to Mr. Thibodeau.

Mr. Thibodeau, at the time that the raid first took place, February 28, the ATF is arriving, Mr. Koresh knew the ATF—before that, Mr. Koresh knew the ATF was coming, in your opinion?

Mr. THIBODEAU. Before?

Mr. SCHIFF. Did Mr. Koresh know the raid was going to occur before it occurred?

Mr. THIBODEAU. I think that when David Jones came in with that information that, yes, he knew.

Mr. SCHIFF. How long was that before the raid?

Mr. THIBODEAU. I'm not really sure. It's been said 45 minutes.

Mr. SCHIFF. All right. And David Jones was a mailman who belonged to the Branch Davidian sect?

Mr. MCMAHON. Yeah, he lived there, off and on. He had a property outside, but he was frequently coming in. His whole family was there.

Mr. SCHIFF. Do you know where he got the information from?

Mr. THIBODEAU. As I said previously, it was—it appeared to be from a news truck that was at the end of the—this is from what I heard in the press.

Mr. SCHIFF. I understand.

Mr. THIBODEAU. A news truck that was at the end of the road, and they were asking directions, are we anywhere near the Branch Davidian compound or the house or whatever? I don't know what they said to him.

Mr. SCHIFF. I know you were not directly the witness here, but as far as you know, Mr. Jones was asked for directions to the Branch Davidian compound from a news truck?

Mr. THIBODEAU. No. The news truck was asking him—I think he pulled over, seeing the news truck and said, Hey, what's going on? And being a mailman, they automatically assumed, Oh, this guy is all right. Well, you know, we are looking—maybe you could help us.

I believe it was that kind of thing, Could you tell us where the Branch Davidian—

Mr. SCHIFF. Do you know who told the news truck that there was going to be something newsworthy happening there very soon?

Mr. THIBODEAU. I don't know for certain. It would sound to me like that would be the ATF.

Mr. SCHIFF. OK. And since you won't be here for the testimony about the raid, one last question. From the best of your recollec-



tion, would you say again from which direction—front, back, up or down—do you believe the first shots were fired from?

Mr. THIBODEAU. I personally believe from the front, but it didn't take long after the front began, to the back, so I would think it was pretty close to simultaneously.

And may I make a statement?

Mr. SCHIFF. Please, if it is brief, because I don't have time.

Mr. THIBODEAU. In the past, we've all been put through the wringer on this whole thing, OK? Time and time again, I have seen things like the "Donahue Shows" and some of these shows, and it's never a fair forum; and I kind of feel cheated here today because I have some specific things that I would like to address. A lot of these points that were made can be addressed in counterpoints, and I've not been allowed to give that testimony, and I don't think anybody else, any other survivors have been allowed that yet, and I really, truly hope that we have that opportunity to address some of these points.

Mr. SCHIFF. Are you able to return to this hearing at some point, Mr. Thibodeau?

Mr. THIBODEAU. Yes, I am, absolutely.

Mr. SCHIFF. I would let you work that out with the chairman.

Mr. MCCOLLUM. If I might, your time is up, Mr. Schiff. We may be able to give you some of that opportunity here.

The panel is going to be recessed. Because we have a vote, we are going to take a recess of this joint committee. Mr. Conyers will have his 5 minutes next, and if Mr. Clinger comes back, his. Perhaps between the two of them, there will be that opportunity.

If there is not, then we will have to—or Mrs. Collins might come back. If not we will have to find another alternative.

Thank you very much. We will be in recess until after this vote.  
[Recess.]

Mr. MCCOLLUM. The subcommittees are called to order.

We have just a couple more questions of some witnesses, a couple more questioners. We really have three more, one chairman and two ranking members, the chairman of the full Government Reform and Oversight Committee.

I was prepared to go to Mr. Conyers, and I will next, but Mrs. Collins has agreed, and I think that Mr. Conyers, if you would. Mr. Barber has to run out. I don't know if either of have you questions of Mr. Barber, but he has got to catch a plane.

I have a question Mr. Clinger is going to yield to me to ask, and out of comity to this, you don't have any questions of Mr. Barber?

Mrs. COLLINS of Illinois. No, I don't.

Mr. MCCOLLUM. If nobody does, I would ask, with unanimous consent then, that Mr. Clinger could have some portion, a minute, of his time to yield to me.

Mr. CLINGER. I would be delighted to yield to the chairman.

Mr. MCCOLLUM. Thank you very much.

Mr. Barber, I just want to clarify something completely for the record. I asked you some questions and then some more were followed up at the end here by some other people today about the grenades and about drug labs and all of that.

My understanding is that, from your testimony, that the reason you primarily turned over—maybe the only reason I think you said

you turned over—the case or called up ATF was because of these grenades that the UPS folks had gotten or found, or whatever, in the mail system. Is that correct? I just want to corroborate that.

Mr. BARBER. It was a combination of the grenade bodies and the explosive materials that they were receiving.

Mr. MCCOLLUM. But the bottom line is, those grenade bodies, as I understand it, were bodies. There was some evidence there was other material there, but the bodies themselves were not live grenades. Is that correct?

Mr. BARBER. They were not live grenades the first time I saw them, no.

Mr. MCCOLLUM. What other material were you concerned about besides the grenades—besides these grenade bodies?

Mr. BARBER. Was the potassium nitrate and the powdered metals.

Mr. MCCOLLUM. What was your source of that information?

Mr. BARBER. Graduating from the bomb technician school at—

Mr. MCCOLLUM. No. How did you know they were getting that stuff?

Mr. BARBER. That was also obtained from UPS.

Mr. MCCOLLUM. That material was obtained from the UPS?

Mr. BARBER. The documentation was.

Mr. MCCOLLUM. But you didn't have any—you had some of the grenade bodies, but you didn't have any of the chemicals?

Mr. BARBER. No, sir, I did not have any of those.

Mr. MCCOLLUM. You were just listening to UPS fellows talking about delivering that stuff out there.

Mr. BARBER. And I actually would get a copy of the receipt.

Mr. MCCOLLUM. Last question: Again just to clarify, you told me earlier that several years before the raid there was some evidence of a methamphetamine lab, but there was nothing current at that time, there was no current evidence within the last year or so, to your knowledge, of any other drug activity, production of drugs, or any of that sort of thing on the compound proper, was there?

Mr. BARBER. No, sir, not to my knowledge.

Mr. MCCOLLUM. I don't have any other questions then of Mr. Barber, and I am going to yield back to Mr. Clinger who reserved the balance of his time, which I think is 3½ minutes at this point, and I would yield then to Mr. Conyers who is ready for his 5 minutes.

Mr. Barber, you are excused. I hope you can catch your plane.

Mr. BARBER. Thank you.

Mr. MCCOLLUM. Thank you very much for coming and being with us.

Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman, and I compliment you, as I have, about the fairness in which you have conducted the hearing, and Mr. Zelf as well, and I am hoping that we can resolve the outstanding question of the subpoenas this evening after we have concluded our activity.

Let me just ask Mr. Thibodeau a yes or no answer as to whether the NRA or anyone on its behalf has contacted you in connection with this hearing?

Mr. THIBODEAU. No.

Mr. CONYERS. In any way?

Mr. THIBODEAU. Not NRA, no.

Mr. CONYERS. Mr. McMahon, may I ask you that same question, please?

Mr. MCMAHON. Yes, sir. Those were the only people that wished to hear the truth.

Mr. CONYERS. You say yes, you have been contacted?

Mr. MCMAHON. I was contacted like right after the raid and fire. This was a while back.

Mr. CONYERS. I meant in connection with the hearing that we are having today.

Mr. MCMAHON. Oh, yes, sir, I have been contacted.

Mr. CONYERS. Sure. And can you give us a little idea of when you were contacted? Was it yesterday?

Mr. MCMAHON. Had I talked to them yesterday?

Mr. CONYERS. Yes.

Mr. MCMAHON. I did talk to them yesterday.

Mr. CONYERS. Sure. And was it the day before?

Mr. MCMAHON. The day before?

Mr. CONYERS. Yes, the day before yesterday?

Mr. MCMAHON. No, sir. I didn't get the letter to come here until yesterday.

Mr. CONYERS. I see. And what was the nature of the discussion between you and them?

Mr. MCMAHON. Just what will I be doing there, what's going on. I mean I—I didn't testify in front of a trial or anything. This is the first time I've been in front of anybody.

Mr. CONYERS. I understand. Let me ask you this. Who was it that you talked to there?

Mr. MCMAHON. I talked to Jim Warner, Mr. Warner—a fellow by the name of Mr. Warner.

Mr. CONYERS. Right, the deputy general counsel of the NRA?

Mr. MCMAHON. I believe.

Mr. CONYERS. He sounded like a lawyer? OK. Let's move on. We will get more. I would like to ask you to amplify that, but we don't have time in the period of 5 minutes.

What I need to bring to this part of our hearing is that just recently in the GOP Contract With America, and specifically H.R. 666, we voted out a bill with nearly unanimous Republican support that didn't require that we have exceptions to the exclusionary rule, good-faith exceptions. We said that—we went a lot further than that—they did, not me—and said that we would throw the whole warrant requirement out of the window if this part of the Contract on America becomes law because we would have an expedited exemption to the whole exclusionary rule. We pointed out that this was eroding the whole Constitution.

And now I am so pleased to find that the same people that voted to further erode the exclusionary rule, of which Mr. Goldstein has very adequately complained of, are now very worried that there aren't teeth in it, there wasn't enough, it was very shoddy, and now we have this incredible conflict.

The crime bill we passed out says warrants aren't even needed for searches. It says there is no need for a magistrate to determine whether there is probable cause. It gives total discretion of probable cause to the law enforcement authorities. As long as they be-

lieved that there was probable cause, then no warrant would be required at all. That is the law coming down the pike.

Mr. Deshcamps, before drawing up his affidavit, Agent Aguilera had spoken with several former compound residents who told him there were machineguns at the compound. He also spoke with firearm dealers who told him they had delivered kits that could convert semiautomatic guns into automatic weapons.

He spoke with a UPS employee who saw a handgrenade fall out of a package before being delivered to the compound, and he spoke with Lieutenant Barber, who told him that a rancher living near the compound had heard machinegun fire. After the raid, machineguns and handgrenades were found.

Is there any case law anywhere that would say that such a factual predicate could, under any circumstances, be insufficient for probable cause in order to obtain a warrant?

Mr. DESHCAMPS. I'm certainly not aware of any such case law.

Mr. MCCOLLUM. Mr. Conyers, your time has gone.

Mr. CONYERS. Well, I want to thank all of the witnesses, and I am hopeful that Mr. Jewell, who had not completed his testimony with Mr. Taylor, would be given an opportunity to do so, because I wanted to hopefully ask him, Mr. Chairman, who I praise for such eminent fairness, did Mr. Koresh personally tell you that if the authorities ever came after him, he would shoot them?

Mr. MCCOLLUM. It may be that we can let Mr. Jewell answer a question like that after we are done, if Mr. Thibodeau is also given a couple of minutes to say something, too. But let's see what happens with our time. We have got a whole other panel.

Mr. CONYERS. You don't think that's a very important question?

Mr. MCCOLLUM. I think it is an important question. I think maybe what Mr. Thibodeau wants to say is important too, but we have got to be judicious.

Mr. Clinger has 3½ minutes left. I yield to him.

Mr. CLINGER. I thank the chairman for yielding. I apologize for not having been here to listen to the testimony. I just have one question, and I am going to yield the balance of my time to the vice chairman of the committee who has been here for the entire testimony, Mr. Schiff. My question would be to Mr. McMahon.

I think you indicated, sir, that you had had the conversations with the representative of the NRA?

Mr. MCMAHON. I have.

Mr. CLINGER. And my question is simply this: Was there an attempt made to influence or direct your testimony? Were you in any way influenced in the way you were supposed to testify here today?

Mr. MCMAHON. No, sir, they did not.

Mr. CLINGER. I thank you very much, and at this point I would like to yield the balance of my time to Mr. Schiff.

Mr. SCHIFF. I thank the gentleman for yielding.

Mr. Thibodeau, you indicated that there were several points you thought could be and should be refuted. On what subjects? About what?

Mr. THIBODEAU. OK. The first subject that I think needs to be brought out is the fact that in 1992, not the Federal Government, but the State authorities came and investigated the children, and they went through the signs of the physical, the mental, and the

sexual abuse, and they couldn't find any, and they dropped their case.

Mr. SCHIFF. Didn't a State official actually come out to the compound?

Mr. THIBODEAU. Yes; that is correct.

Mr. SCHIFF. Was the State official fired on by anyone?

Mr. THIBODEAU. Absolutely not.

Mr. SCHIFF. Was the State—

Mr. THIBODEAU. They came out with the—

Mr. SCHIFF [continuing]. Was imprisoned so that he or she—I believe she in this case—couldn't leave?

Mr. THIBODEAU. No. She was free to come and go.

Mr. SCHIFF. Thank you.

Go ahead.

Mr. THIBODEAU. As a matter of fact, when asked about the underground bus, David Koresh took her down there and showed it to her. So I mean, from what my understanding was, he pretty much opened the place up to her.

But anyway, they found no signs of the abuse that has been discussed, and they dropped their case.

The next day, in the Waco Tribune Herald, the health people said that these are the nicest, most well-behaved children we've ever had the pleasure to work with. I think if we are going to check out the child abuse issue, that's a pretty powerful statement for a health worker to make for kids that are abused readily as we have heard.

Also the sheriff—

Mr. SCHIFF. I just want to say that the child abuse issue, in my judgment, has absolutely nothing to do with this hearing.

Mr. THIBODEAU. I agree with you 100 percent.

Mr. SCHIFF. That was not a matter that was being investigated by Federal law enforcement. That doesn't mean it's not an important issue, but since it has been brought up time and time again, I thank you for at least putting in the other side.

Go ahead, please.

Mr. MCMAHON. One more thing. The sheriff's department also came out with them, and the next day in the press David spent a lot of time talking with the people from the sheriff's department. Because of what happened in 1987, with George Roden, he felt he was misfairly treated. He spent—invited him out later on to go fishing or whatnot.

Mr. SCHIFF. I'm sorry.

Mr. MCMAHON. He invited the sheriff's department—some of these sheriff department officials. I do not know the names.

Mr. SCHIFF. Who invited them?

Mr. MCMAHON. Koresh did himself when they came out with the health workers, and they said the next day in the Waco Tribune Herald that the only problem with the people out there at Mount Carmel is that they are misunderstood. These are quotes from the legal representation of McLennan County, and I think it's pretty much well documented that David Koresh knew Jack Harwell, the sheriff, on a first-name basis.

I think the ATF definitely should have gone through Jack and come out with the sheriff to knock on the door and not—by the

way, the search warrant—if I just may say this really quick—that was a knock search warrant. You are supposed to go to the door, knock on the door, and present it.

I don't understand how you can serve a knock search warrant with helicopters coming into the back, three different groups of ATF agents, one going up the side to throw in flash-bang grenades to get the evidence while another team goes and shoots the dogs, while yet another team is going to the front door to serve the warrant. That's spontaneous, it's happening at once, and that is not—and you can get a no-knock search warrant, sir, if my understanding is correct. They did not have one, and I don't understand why they would choose a dynamic entry with having a knock search warrant.

Mr. SCHIFF. Let me go back to the search warrant. Are you saying the sheriff's officials were invited out to the compound?

Mr. THIBODEAU. Yes.

Mr. SCHIFF. You actually saw them there?

Mr. THIBODEAU. No. They never came out later, but David always made the invitation open to them to come out if they wanted to fish on our pond. We had a stocked bass pond.

Mr. SCHIFF. So he wasn't hesitant about having law enforcement agents there?

Mr. MCMAHON. No. And, you know, there was one more interesting incident I just thought of. When the initial reports came about all these automatic weapons, Steve Schneider actually went into the sheriff's department and put a Hellfire trigger switch on the desk and said this is legal I believe under the ATF. That's probably what you heard out there.

I'm not saying that's right or wrong, sir; all I'm saying is that all the way along Koresh tried to work with law enforcement. And I know this from experience. Koresh always tried to work with people.

Mr. MCCOLLUM. Mr. Schiff, your time has expired.

Mr. SCHIFF. I thank the Chair.

Mr. MCCOLLUM. At this time I will yield 5 minutes to Mrs. Collins.

Mrs. COLLINS of Illinois. Mr. Chairman, before the clock starts running, I need to ask for some verification. I will tell you what it is. I have a split-second yes or no answer that I would like, then I would like to yield another 15 seconds to Mr. Conyers and then 2 minutes to Mr. Gene Green and 2 minutes to Sheila Jackson Lee. I don't have a time watch here, and you are going to take the time?

Mr. MCCOLLUM. We will take care of it. We will do our best.

Mrs. COLLINS of Illinois. I want to make sure, because I know those lights go off real fast.

Mr. MCCOLLUM. Maybe we will do this by hand. We will do our own stopwatch over here. You get going now. I yield to you now. Your clock starts running right now.

Mrs. COLLINS of Illinois. OK. Thank you, Mr. Chairman.

I yield to Mr. Conyers.

Mr. CONYERS. Thank you, Mrs. Collins. First of all, Mr. McMahon, would you give us by tonight some statement about your contact with the NRA that we were discussing, please?

Mrs. COLLINS of Illinois. Yes or no.

Mr. CONYERS. No, that wasn't a question. I was asking him to do that. OK?

Mr. MCMAHON. I don't understand why. Are you ordering me to? Are you saying do it or—

Mr. CONYERS. Yes, I would like you to do it, please.

Mr. MCMAHON. I will consider.

Mr. MCCOLLUM. I think the time is up that she has yielded to you.

Mr. CONYERS. Let me quickly ask Mr. Thibodeau. On "Turning Point" last Thursday night on ABC, you testified that you saw Koresh when the raid occurred; you saw Mr. Koresh hold out his hand and say, "Let's talk about this." Do you remember that testimony?

Mr. THIBODEAU. Yes, I do remember that testimony.

Mr. CONYERS. And today you said you were nowhere near the door with him, that you were way at the back of the room.

Mr. THIBODEAU. Because what I said with that testimony, Mr. Conyers, is, I said that I heard from three separate eyewitnesses who were at the front door who told me the same thing, that that is exactly what occurred.

Mr. CONYERS. You didn't see it.

Mr. THIBODEAU. No. I made that clear, that I was not at the front door.

Mrs. COLLINS of Illinois. Reclaiming my time, Mr. Jewell, can you tell me, from your own knowledge, what perhaps Mr. Koresh told you he would do if authorities ever came after him?

Mr. DAVID JEWELL. I will try to make this as short an answer as I possibly can, but over a period of years, in trying to maintain contact with my daughter, I have called the compound and twice got Mr. Koresh on the phone and was engaged in a conversation with him.

Mr. Koresh and I shared a common religious ancestry in that we were both raised Seventh-day Adventists. We had that in common. And as Seventh-day Adventists, we understood that, at the time of the end, that God's people would be persecuted and perhaps put to death. He told me during the course of that conversation that that was true. However, when they came after him and his people, they were going to fight back and kill anybody that they had to.

Mrs. COLLINS of Illinois. Thank you very much.

I yield to Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

I appreciate the ranking member of my committee yielding time to me. I don't know if we still have the grenade paperweight that was shown earlier, and maybe it is just because I'm from Texas and I have seen them before in Army surplus stores, but I don't have a case of them.

Mr. McMahon, if you could tell me, we heard testimony from Mr. Barber about UPS saying that there were cases of those paperweights that were delivered and that was one of the reasons for his concern in calling in ATF.

In your experience as a firearms dealer, do you know at that location if they were using those hollow grenades to pack explosives in?

Mr. McMAHON. I never saw any hollowed grenades. I never saw them out there. I have seen those types of grenades at gun shows as a paperweight, but I have never seen any at David's.

Mr. GREEN. Do you know if any of them have ever been used to pack explosives in and then use them as a grenade?

Mr. McMAHON. By the Branch Davidians?

Mr. GREEN. No. Do you know if that is available? Is that possible?

Mr. McMAHON. I guess it's possible. I mean I'm not qualified to answer that.

Mrs. COLLINS of Illinois. I reclaim my time. I yield the remaining time to Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you very much. And I imagine I have to talk like the speeding bullet. I hate to use that terminology.

Let me say how proud I am of Kiri. I have a 15-year-old, and I'm just—you have stood here so long.

Mr. Jewell, if you can help me, you said very clearly you are not a theologian, you are not a pastor, but you talk about, this is for the American people, and people hear the word "religion," and they hear the fact that we should in this country respect it. Help me understand, from what your daughter went through, would you say that he had gone beyond and that we had reached now a point of a cult? What is your sense of it?

And I have a quick question for Mr. McMahon, and you see how fast I'm going.

Mr. DAVID JEWELL. The one thing that I think God expects of us is that we use our own minds to develop ourselves and become everything that we can be. That differs from what it is my understanding that David Koresh encouraged his followers to do in that he encouraged them to listen only to him, and he could change his mind any time he wanted to and his word was still law.

Ms. JACKSON LEE. I think for the American people that is important, because you mentioned a certain religion, and I would not want it to be indicted for what really was a true cult and took away the minds of people.

Mr. McMahon, did you visit Mr. Koresh in the compound?

Mr. McMAHON. At David's house? Yes, ma'am, I did.

Ms. JACKSON LEE. And you just mentioned, was that his home?

Mr. McMAHON. Yes.

Ms. JACKSON LEE. Were there women and children there?

Mr. McMAHON. Yes, ma'am.

Ms. JACKSON LEE. Were there some children under 5?

Mr. McMAHON. I would think so. Parents spent—

Ms. JACKSON LEE. Was he a licensed gun dealer?

Mr. McMAHON. No, ma'am, not that I know of.

Ms. JACKSON LEE. Could you describe maybe the amount of weapons that were in the home there or maybe as much as you sold to him?

Mr. McMAHON. I just turned the list in to—

Ms. JACKSON LEE. Just give me a kind of an estimation.

Mr. McMAHON. I sold him around 223 guns.

Ms. JACKSON LEE. Pardon me?

Mr. McMAHON. I sold him around 223 guns.



Ms. JACKSON LEE. Would that be the average amount of weapons you find in the normal American families' homes? Would you have any way of estimating that?

Mr. MCMAHON. No way of estimating. I mean they have estimated it to be like three guns per person, and that is below the average.

Ms. JACKSON LEE. But this, however, is a home with children, wives, and you said 223 that you sold, and of course that doesn't account for what else he might have had.

Let me move on, and thank you very much for that. But that was his home.

Mr. MCCOLLUM. I think I've been very liberal about the time.

Ms. JACKSON LEE. Have you been liberal? And I've got so many more questions.

Mrs. COLLINS of Illinois. Mr. Chairman, let me thank you for being so liberal with your time. You have certainly been very fair in having extended my time. I greatly appreciate it.

Mr. MCCOLLUM. You're quite welcome, and it has been a pleasure today.

Ms. JACKSON LEE. I too, as well, Mr. Chairman. I hope that our earlier question about being able to ask questions will be considered.

Thank you.

Mr. MCCOLLUM. We are doing our best here. I think that we have pretty well completed all of the formal questions we are supposed to have. If we let this continue, we will never get to another panel.

I have questions I would like to ask actually, but nonetheless I think they can be submitted in writing, and if any of you want to submit them, please do.

[The material was not submitted by time of printing.]

Mr. MCCOLLUM. Somebody asked earlier about statements. Before I release this panel and turn the gavel over to Mr. Zeliff, I want to make sure everybody understands. Without objection, anybody's statement—any of the witnesses' and any of the panel members' statements—may be submitted for the record.

Mr. Thibodeau, you had wanted to make a statement on the record. We don't have time. No one has got a question—

Mr. THIBODEAU. May I submit them in writing?

Mr. MCCOLLUM. You may submit it in writing, absolutely. And we have done the best we could through Mr. Schiff to give you some verbal time.

With that in mind—

Mrs. THURMAN. Mr. Chairman.

Mr. MCCOLLUM. Mrs. Thurman.

Mrs. THURMAN. Of course that would be offered to all of the witnesses here today.

Mr. MCCOLLUM. All of the witnesses. I just made that statement. All of the witnesses have a right to submit a statement in writing.

Mrs. THURMAN. How long will we hold the record open?

Mr. MCCOLLUM. The record certainly is going to be open at least through the period of the time of the hearings over the period of the next couple of weeks. Certainly through the end of this month, I would suggest, they will be open.

Mr. MICA. Mr. Chairman.

Mr. MCCOLLUM. Yes, Mr. Mica.

Mr. MICA. Just a question, parliamentary inquiry. I have a copy of Ms. Jewell's notes or statements. I wasn't in when she testified, and I wondered if this statement had been made a part of the record and also, Mr. Chairman, when this was presented.

Mr. MCCOLLUM. If I may say, if you were not here, the record will reflect that Mrs. Thurman was asking the questions. She asked Ms. Jewell to read the entire statement, and she read it verbatim. So it has been read into the record, Mr. Mica.

Mr. MICA. When was it given to the committees?

Mr. MCCOLLUM. I believe the committees received it this morning.

Mr. ZELIFF. My understanding, at the time she was speaking.

Mr. MCCOLLUM. It was before she spoke but during this morning.

Mr. MICA. Because I didn't see that our side had this.

Mr. MCCOLLUM. This morning. I know they were at the desks here this morning.

Well, with those parliamentary inquiries, I want to thank this particular panel. You have been very gracious. You spent your time. Some of you had some pretty tough questions to answer. We thank you very much for coming, and now I'm going to turn the gavel back over to my cochairman, Mr. Zeliff, for the last panel of the day.

Thank you.

Mr. ZELIFF [presiding]. OK. I would like to thank this panel and have the next panel come forward to be seated and sworn in.

While you are proceeding to the witness table, I would like to, in the order that I call everybody and introduce you—it would be on your right, my left—I will start with Davey Aguilera—on your far right, my left—who is a Bureau of Alcohol, Tobacco and Firearms special agent. Chuck Sarabyn is the former Bureau of Alcohol, Tobacco, and Firearms Special Agent in Charge in Houston. Earl Dunagan is a former Bureau of Alcohol, Tobacco and Firearms Special Agent in Charge in Austin. Bill Johnston is the assistant U.S. attorney in Waco, TX. Dan Hartnett is the former Bureau of Alcohol, Tobacco and Firearms Deputy Director for Enforcement. Ed Owen is a firearms expert for the Bureau of Alcohol, Tobacco and Firearms. H. Geoffrey Moulton, Jr., was the Project Director of the Treasury Department Review Team. Dr. Bruce Perry is an associate professor of psychiatry and behavioral sciences at Baylor Medical College.

Thank you, gentlemen.

[Witnesses sworn.]

Mr. ZELIFF. Thank you. Let the record show that the answers were in the affirmative. I know that each of you comes with a very special story, and we appreciate your being here. Some of you appear on future panels during these hearings to address different concerns. Today, by previous agreement, we will try to focus on the investigation and the warrants portion, and we will begin with questions.

The Chair now recognizes the vice chair of our National Security Subcommittee and my friend, Robert Ehrlich of Maryland.

Mr. EHRLICH. Thank you, Mr. Chairman.

I thank you all for appearing before us today. Before I begin my formal remarks, I would just like to make a couple of points.

Mr. ZELIFF. Bob, we have rechanged the order, and I apologize. Would you be willing to hold off?

Mr. EHRLICH. Sure.

Mr. ZELIFF. What I would like to do is have our colleague, Mr. Barr, for 15 minutes first.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Johnston—is it Johnson or Johnston?

**STATEMENT OF BILL JOHNSTON, ASSISTANT U.S. ATTORNEY,  
DEPARTMENT OF JUSTICE**

Mr. JOHNSTON. It is Johnston with a T.

Mr. BARR. That is what I thought. You have a law degree?

Mr. JOHNSTON. Yes, sir.

Mr. BARR. And you serve as an assistant U.S. attorney, a prosecutor?

Mr. JOHNSTON. Yes, sir, I do.

Mr. BARR. OK. I have a law degree, and I served as a U.S. attorney, so we have two things in common. I suspect we have something else in common, and that is, neither of us are particularly enamored with Mr. David Koresh. Am I correct in that we share that in common?

Mr. JOHNSTON. Based on what I did, he did some bad things.

Mr. BARR. Based on what I know he did also, and I think that is something that we do have in common.

Let me, if I could, Mr. Johnston, ask you a few questions. Define very succinctly for me "dynamic entry."

Mr. JOHNSTON. I hadn't heard that term, "dynamic entry"—

Mr. BARR. Neither had I.

Mr. JOHNSTON. I suppose it means some active movement in a search warrant.

Mr. BARR. Let me kind of back up then. Do you know what the term "dynamic entry" means?

Mr. JOHNSTON. I could give you a definition that I think it means.

Mr. BARR. OK.

Mr. JOHNSTON. Shall I?

Mr. BARR. Please.

Mr. JOHNSTON. A search warrant or a—

Mr. ZELIFF. Could you pull that mike up a little closer to you?

Mr. JOHNSTON. Yes, sir.

Police activity in connection with a search warrant that involves an entry where the persons are not invited in. In other words, as opposed to like where the police call ahead of time and are invited in or do some low-profile entry, it would be more in the nature of a moving search warrant like you might see on television where agents are running instead of walking and so forth.

Mr. BARR. Was the entry in this case a dynamic entry?

Mr. JOHNSTON. I wasn't there, but based on what I see on television, in keeping with the definition I have just given, I think it was.

Mr. BARR. OK. You were not at the scene?

Mr. JOHNSTON. No, sir.

Mr. BARR. OK. And did you have any discussions at any time prior to the dynamic entry or whatever it was on February 28, 1993, with ATF concerning a dynamic entry?

Mr. JOHNSTON. Not concerning that term. They discussed—they mentioned almost in passing that they were going to do something, I learned, in the nature of having agents in cattle trailers. I didn't know the details of the raid plan.

Mr. BARR. OK. Are you familiar with testimony in a previous court case concerning efforts by a defense attorney to question—raise questions with a witness as to whether or not you had told them that your office or you would not approve a search warrant or an affidavit in support of a search warrant unless it contemplated a dynamic entry?

Mr. JOHNSTON. I have, and it's a gross mischaracterization of anything I've said.

Mr. BARR. You are familiar with that in the prior proceedings.

Mr. JOHNSTON. I heard of that, yes, sir.

Mr. BARR. Would it be fair to say, Mr. Johnston, that the purpose of an investigation in support of a potential prosecution involves an effort to see that justice is done?

Mr. JOHNSTON. Absolutely.

Mr. BARR. Would you share with me a concern that Federal employees, whether they are involved in law enforcement or non-law-enforcement activities, if they violate the law or engage in wrongdoing, that they should be prosecuted and brought to justice?

Mr. JOHNSTON. Absolutely.

Mr. BARR. Would you also agree with me that an effort to do so through an internal—that is, within the Government—investigation ought to be a search for the truth?

Mr. JOHNSTON. I think any investigation ought to be a search for the truth or it's not much of an investigation.

Mr. BARR. Certainly one involving allegations of wrongdoing on the part of officials sworn to uphold the law?

Mr. JOHNSTON. Yes, sir.

Mr. BARR. With that in mind then, I would ask you, would it be appropriate in an investigation of alleged wrongdoing by Federal officials that the Government deliberately and explicitly direct that evidence not be gathered, that witnesses not be interviewed, that no record of interviews be kept, that the passage of time hopefully will cause witnesses' memories to dim?

Would that be a fair search for the truth, or would that be more in the nature of damage control or a coverup?

Mr. JOHNSTON. Well, what you're describing doesn't sound like—and I don't know if you are asking that in hypothetical with reference to this case, sir.

Mr. BARR. It's not hypothetical. I am going to show you some documents that establish it is not hypothetical. If I could have a clerk.

If you would, please, Mr. Johnston, these are three documents which were contained in the documents made available to this body by virtue of the subpoena. One is a memo from Robert McNamara to John Simpson and others, Treasury Department, dated 14 April 1993. Subject: Preliminary investigative plan. It says that this is law enforcement sensitive and it involves an investigation of ATF,

and it states, on page 2, "DOJ does not want Treasury to conduct any interviews or have discussions with any of the participants who may be potential witnesses."

Then later in that same subparagraph it talks about, while we may be able to wait for some of them—witnesses—to have testified in the criminal trial, the passage of time will dim memories.

Then later on, it states at the very bottom of page 2, the prosecutors are concerned that anything negative even preliminary could be grist for the defense mill. And that document goes on.

Another of the documents that you have before you is another Treasury Department document, this one from Ron Noble, Assistant Secretary for Enforcement, dated September 17, 1993, and it reflects an interview that took place on March 1, 1993, "ATF initiates a shooting review."

And then it goes on, Troy tells review they immediately determined that these stories did not add up; that is, interviews with Rodriguez, Matteson, Chojnacki, Cavanaugh, Sarabyn. Then it says Johnston at this point advised Hartnett to stop the ATF shooting review because ATF was creating Brady material.

Because Chojnacki had not yet been interviewed, Johnston authorized that interview, but no notes were created. A third document, which you have before you, is another Department of Justice document dated April 9, 1993, again from Robert McNamara, to Ron Noble.

While the subject matter at the beginning of that document has to do with the Waco press release, in the middle of it, it says Justice prosecutors in Washington and in Waco said that any words which would—which could be interpreted as being critical of ATF must be avoided since it would play into the defense attorney's hands and aid the defense attorneys in making ATF the issue, and then that document goes on.

There are some other documents that I have before me, and I'll make these available. These are not as clear as these typewritten documents. They are notes that again were furnished to us pursuant to subpoena. And if I could have a clerk deliver those to Mr. Johnston, please.

One reads as follows. And this is document number 00014137. It says, T. Rangers, perhaps for Texas Rangers, Ray Jahn does not want them, Chojnacki, Phil, Ray, interviewed, because Jahn does not want any more exculpatory statements generated.

The other one I think that we've already dealt with in previous testimony had to do with Mr. Jahn advising Ron Noble not to open an envelope. And the final one here involves, again, and I apologize for the lack of clarity, but we have to deal with what we have. It again involves some handwritten notes.

The first word at the top of the page looks like LeRoy, and it says, statements from agents, A-G-T-S, I presume that means agents, should they go to U.S.A., which I presume is U.S. attorney, or us. Do they want us to create new, and then there's a blank, and then it concludes by saying, asking questions to which would require us to create new documents, parenthetically it says exculpatory.

These documents to me, Mr. Johnston, raise very troubling questions about what was going on here. We heard at the very begin-

ning today, an article here in the paper talking about damage control and this is dated today, July 19. And I have some very serious concerns here that this started a long time ago. I'm—and I have a background as a prosecutor and I would presume that these sorts of memos, and I know you didn't generate them, at least it doesn't appear that you did. They came from another lawyer at the Department of Justice, Mr. McNamara, I believe, and I don't know who wrote the handwritten notes, but these are documents that were furnished by the Government, presumably generated by the Government as part of an investigation to determine, I suppose, among other things what went wrong and what agents might have done wrong.

I mean we know that there were things done wrong. I mean agents were terminated because of that, because of misstatements, because of misleading activities. Was this—I mean what's going on here?

Mr. JOHNSTON. OK. I cannot speak to the references to Ray and LeRoy Jahn. They were here and it appears there are references to them and exculpatory matters. I was not concerned about exculpatory matters. The truth is the truth. I can speak to the note that has my name in it, which talks about Hartnett and the shooting review.

The typical protocol with ATF, my understanding is, is after an incident, shooting incident occurs, a shooting review team is created, sometimes out of Washington, sometimes elsewhere. They normally go down and interview the agents. They—I don't know if it's normally recorded or not, but at least notes are taken. That process started. There were at least a couple of—there were some interviews, I don't know how many. This was in early March, I believe.

It was fairly soon after the incident. ATF began—immediately received a great deal of criticism for what they had done and it became obvious at least to me that ATF probably should not investigate ATF as far as the criminal case goes. And I don't have the authority to direct ATF to do something, but I did talk to, I think, Mr. Hartnett, I'm not sure, he can state whether or not, and told him that in line with our hope or at that point it may have been a fact that the Texas Rangers have agreed to investigate this case, let them investigate it, please. Because for ATF to interrogate ATF with the built-in bias and suspicion that already existed, I thought was—would be not healthy.

I had no reason to think ATF would in their own interviews cover something up, but there were a lot of people that did. And the Texas Rangers, I believed, would be an objective, a qualified body to investigate it. And yes, sir, I asked the Rangers to do the investigation, all in all.

Now for ATF to have come in and had a Shooting Review Team member interview someone and have the Ranger come in three minutes behind and do the same thing, I thought, was very imprudent. The Texas Rangers, I believed, could ask questions, get straight answers, and develop the truth of what happened. And may I add, in terms of the timing of it, there's some—I feel you've alleged on someone's part, maybe mine, that I want people's memories to dim.

In fact, I asked the Texas Rangers to—and I asked the Waco police department the night this happened to begin interviewing ATF agents before the memories dimmed. Waco police detectives, I could name two or three, at my request went to the Hillcrest Hospital in Waco, and taped interviews with agents, while they were still on codeine and so forth. And the Texas Rangers I asked to, as quickly as they could, get interviewing. And they did, sir, and they were all audiotape and all made available. And there were some—

Mr. BARR. The reference to memories being dimmed was contained in this memo by Mr. McNamara. And it would be very interesting to ask him some of these questions, but in terms of your prosecutorial background, which from everything I can tell is exemplary, why would—why would the Federal Government, first of all, be committing things like this to writing, but more importantly, why would they be deliberately directing that in terms of an internal investigation to uncover potential wrongdoing? Why would they be explicitly directing that evidence not be accumulated, that interviews not be conducted, that when they are, perhaps there ought not to be any notes taken?

I mean why would that happen? And let me also say I know as a prosecutor, Brady material can sometimes be a pain in the neck to deal with. It's exculpatory in court, but we have mechanisms for it, but it seems to me that the Government was trying to cover something up here.

Mr. JOHNSTON. Well, I sure wasn't. In fact, I was trying to avoid the question of a coverup. If ATF had done this investigation themselves, as I say, I have no reason to think they would have coached their own agents or would have suggested answers to their agents. But I thought it would have been a real easy thing to criticize. And quite objectively, because ATF was under attack so strongly, they may have bonded together in interviews. I don't know. I don't think they would have done it intentionally, but it was extremely important to have objectivity.

My desire for the Texas Rangers to do it was to seek the truth in the most unintimidating circumstance possible. In other words, so that the Texas Rangers could ask ATF agents one-on-one, which they did, audiotaped everything that happened. And I felt the Texas Rangers—the ATF agents would be comfortable talking to the Texas Rangers, whereas they may not be comfortable talking to ATF supervisors and a Treasury review—I mean a—I'm sorry.

Mr. ZELIFF. I'm sorry, your time is up. If you'd just kind of—

Mr. JOHNSTON. I'll try to quickly finish the answer, sir, Mr. Chairman. Because there was conflict within ATF by this time, a lot of agents at the staging area felt the element of surprise had been lost there, a lot of conflict. The Shooting Review Teams are often comprised of people involved in a supervisory capacity. There was conflict between line agents and supervisors, and I felt to give it the best chance of being a truthful interview of each agent, the Texas Rangers should do it, sir. And as to Brady, I'm not afraid of Brady. As to exculpatory matters, I am not afraid of exculpatory matters and was not.

Mr. BARR. Well, that—your sentiments do not seem reflected at all in these documents.

Mr. JOHNSTON. I certainly didn't create them, sir.

Mr. BARR. These certainly will be looked into, further. I thank the chairman, and I thank Mr. Johnston.

Mr. ZELIFF. Thank you. I think what we're going to—anybody know how long this vote's going to be? One 15-minute vote? OK. We're going to recess for 15 minutes. We have a vote, we'll be right back.

[Recess.]

Mr. ZELIFF. The committees will come to order. The Chair recognizes Mr. Schumer from New York for 15 minutes.

Mr. SCHUMER. Thank you, Mr. Chairman. I want to thank all the witnesses for being here. I have a whole series of questions, but I would like to make one point first. I'm sorry most of my colleagues on the other side aren't here. We've heard a lot of talk about faulty warrants, search warrants. And, you know, that it might—some "I" might not have been dotted, some "T" might not have been crossed.

If I'm not mistaken, these are the same folks, my colleagues to the right here, who voted to eliminate the need for search warrants with the good faith exception to the exclusionary rule. Now I think that's, you know—I didn't support that. I can see an argument, but it does strike me as a little strange that just a few months ago people voted that there should be good faith.

No one doubts the good faith of the people here, and yet here we're making a huge fuss about warrants not being perfect. It's the topsy-turvy nature of this hearing altogether. It's my belief that, as I said in my opening statement, that this idea of moral equivalence, that, well, here we have Koresh and here we have ATF and FBI and they're sort of the same. They've each made some mistakes. Maybe ATF is the villain or FBI is the villain and Koresh is a misunderstood guy; is going to lead the other side into trouble throughout these hearings if that's their view, and it seems to me that is in many ways.

Now I'd like to ask first, Mr. Aguilera, some questions. I want to focus on the warrant. First of all, Mr. Aguilera, how many warrants have you put together in your career as an ATF investigator? Approximate.

**STATEMENT OF DAVEY AGUILERA, SPECIAL AGENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. AGUILERA. Approximately 30 or more.

Mr. SCHUMER. Thirty. Have any ever been thrown out?

Mr. AGUILERA. No, sir.

Mr. SCHUMER. So you've had a 100-percent record in putting together decent warrants?

Mr. AGUILERA. Yes, sir.

Mr. SCHUMER. Warrants at least that met the tests that courts impose?

Mr. AGUILERA. Yes, sir.

Mr. SCHUMER. Thank you. And let me ask you this. What made you initiate the investigation of the possible manufacture of machineguns and explosive devices by Koresh and other members of the Davidians in the compound in Waco, and from whom did you receive the information?

Mr. AGUILERA. I received—

Mr. SCHUMER. What got you into this, is the vernacular question.



Mr. AGUILERA. I received the information from Lt. Gene Barber from the McLennan County Sheriff's Office.

Mr. SCHUMER. This didn't come out of your head or some higher up in Washington or anything like that, this came from local law enforcement?

Mr. AGUILERA. Yes, sir.

Mr. SCHUMER. And they don't call you very often to do something like this, do they?

Mr. AGUILERA. No, sir.

Mr. SCHUMER. This was because of the extreme nature of what Mr. Koresh was doing?

Mr. AGUILERA. That's correct.

Mr. SCHUMER. OK. In your experiences, do people generally order cases and cases of grenade casings and then order metal parts and the, what's it called, nitrate? No, makes aluminum nitrate, I guess hydrogen nitrate or ammonium nitrate.

Mr. AGUILERA. Potassium nitrate.

Mr. SCHUMER. Potassium nitrate, thank you. Do they do that? I mean do they do that unless usually they have some kind of bad purpose in mind?

Mr. AGUILERA. No, sir, not usually.

Mr. SCHUMER. You don't need, just to clarify for the record, you don't need ammonium nitrate or magnesium or aluminum powder to help a paperweight?

Mr. AGUILERA. No, sir.

Mr. SCHUMER. No. The casing alone might suffice for the paperweight. I thought so. Let me—even Mr. Zeliff is smiling at that question. Mr. Barr is not here. I wanted him to hear it, too. But in any case—OK. Let me—I'm on a roll, right.

Well, it's not hard to be on a roll when the facts are on your side. In any case, let me ask you, other than arms dealers, we saw one of the arms dealers, who else did you interview in an effort to find out if the Davidians possessed or were manufacturing illegal weapons and what did you learn?

Mr. AGUILERA. I interviewed numerous former Davidian members.

Mr. SCHUMER. Right.

Mr. AGUILERA. And I obtained——

Mr. SCHUMER. I am interested in the neighbor, tell us a little about the neighbor, since we had wanted him to come testify, Mr. Servenka, if I'm pronouncing his name correctly.

Mr. AGUILERA. Yes, Mr. Servenka.

Mr. SCHUMER. Servenka, he's not allowed, so we'll have to rely on your testimony about it.

Mr. AGUILERA. Yes, sir. I initially received the information from Gene Barber who was told by Mr. Servenka that he had heard machinegun fire throughout the evenings. And thereafter, I personally interviewed Mr. Servenka, who told me the same thing.

Mr. SCHUMER. OK. Thank you, Mr. Aguilera. At least I think the case has been made overwhelmingly that you met appropriate standard in this warrant and that we're getting some crocodile tears about it.

My next questions come for Mr. Johnston, who I must say has a reputation of being a fine prosecutor. How many years have you been a prosecutor?

Mr. JOHNSTON. Little over 10 years, 8 years in the Federal system.

Mr. SCHUMER. How many search warrants have you reviewed?

Mr. JOHNSTON. Several hundred.

Mr. SCHUMER. OK. Did you feel that Special Agent Aguilera had done a decent, a good job, on the investigation of violations in the firearms law at Davidian when you saw the warrant?

Mr. JOHNSTON. I felt he had done a very good job, and the affidavit itself, while he gave the information and drafted it, it was worked on by assistant U.S. attorneys, including me, and there has been a lot of talk today about the sexual abuse in the affidavit.

Mr. SCHUMER. Yes, I was going to ask you that.

Mr. JOHNSTON. That was my call.

Mr. SCHUMER. And why did you put it in there?

Mr. JOHNSTON. For a number of reasons. Primarily, a woman named Joyce Sparks had given information——

Mr. SCHUMER. We're heard about her. She was interviewed by a member of the Waco Committee Team named Ms. Haga.

Mr. JOHNSTON. There was quite a bit of information, I think a page or more, about Joyce Sparks and the information she had received. In and of itself it wasn't—it didn't say the machineguns, but it demonstrated that they had apparently had weapons, they had—there was some threatening discussion by Koresh involving Ms. Sparks.

Further, there was evidence of a buried schoolbus that may act as a shooting range. At any rate, to explain to the magistrate why Ms. Sparks was there, I made the decision to include in there why she was there. She was there to investigate abuse—allegations of sexual abuse of children. And the allegations of sexual abuse in my mind were referenced generally in the affidavit. Had I—had I wanted to——

Mr. SCHUMER. I don't mean to hurry up, but my 10 minutes, I've got a lot of others here.

Mr. JOHNSTON. Had I wanted to prejudice the affidavit and the warrant, I would have put—I knew Kiri Jewell's story before the affidavit was drafted. And I would have put in all the details, the gory details about how he—what he did to her. I didn't want to prejudice the magistrate, but I did want to put the context of Ms. Sparks' visit. It was put in there to show why she was there and that she was there deliberately. There was evidence of sexual abuse. She didn't drop out of the sky. She had a good reason to be there.

Mr. SCHUMER. And of course, and I think it's been pretty clear the warrant's OK, so I am not going to bother you with many more questions. Just reiterating the fact, defense lawyers, which are very capable, didn't challenge. And furthermore, we found, and I'll get to that with Mr. Owen, we actually found violations of law, you did, on the compound. But just one other quick answer.

You also found some other things. I think some of those are the books that you have next to you. Would you just briefly, if you could, Mr. Johnston, explain what—let me ask you and then you

can corroborate. As I understand it, those books explain how to make bombs and things like that and they were found on the compound.

Mr. JOHNSTON. Well, these books were ordered and sent to the Davidians. They—along with—in and of themselves, they might just be interesting reading, but they go with the materials they had. This one, which they had—these were introduced at trial, Congressman.

Mr. SCHUMER. "Improved Land Mines."

Mr. JOHNSTON. "Improvised Land Mines, Their Employment and Destructive Capabilities." "CIA Field Expedient Methods for Explosive Preparation."

Mr. SCHUMER. OK, et cetera, et cetera. We'll submit for the record all of the names.

Mr. JOHNSTON. Anyway, they had to do with bombs and bombing.

Mr. SCHUMER. Those weren't being used as paperweights, were they, when you arrived, when you saw them?

Mr. JOHNSTON. They—the things they had fit into the talk in the books.

Mr. SCHUMER. Thank you. OK, Mr. Owen. And again I apologize. All of these witnesses have put lots of their lives into this case, and it's sort of unfair to rush through, but I have so many points I want to make, I have to. And Mr. Johnston, I think you've done an excellent job on this case and we very much appreciate it.

Mr. JOHNSTON. Thank you.

Mr. SCHUMER. Mr. Owen, would it be fair to say, and don't be modest, that you're an expert on firearms?

#### **STATEMENT OF ED OWENS, FIREARMS EXPERT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. OWEN. Yes, I've been recognized as an expert.

Mr. SCHUMER. OK. Here is my question. Did you—you were on the scene. You identified guns from the compound. Could you tell us briefly about that?

Mr. OWEN. I was assigned to assist both the FBI and the Texas Rangers at the evidence collection point.

Mr. SCHUMER. This is how many days after the—

Mr. OWEN. This was the day the search began. It was several days after the fire.

Mr. SCHUMER. Got it. Could you identify any of those weapons that you actually saw at the compound?

Mr. OWEN. Yes, sir. In fact the representative of the Texas Rangers has several of the weapons.

Mr. SCHUMER. They happen to have them here? Good. Could we—could we see—could one of the Texas Rangers please show us one of the illegal weapons that were found at the compound? The actual weapon is here. You're from the Texas Rangers, sir? We thank you for your help.

Mr. JOHNSTON. That's Sgt. Jim Miller of the Texas Rangers.

Mr. SCHUMER. Thank you, Sergeant.

OK. Could you just hold that up? Now, Mr. Owen, do you have to go over there and examine them or is it sufficient for you to see

from here, are those weapons—could you name what they were? Could you hold that one up, please, sir? Stand up, please.

Mr. OWEN. I need to see it a little bit closer.

Mr. SCHUMER. Go over, please. And could the other gentlemen just stand up so the committee could get some idea? OK. Now that one's obviously charred. Can you just tell us what these were and if you found them at the compound?

Mr. OWEN. This is a converted AR-15 type rifle, manufactured by—

Mr. SCHUMER. Converted means being made into an automatic, I presume.

Mr. OWEN. Give you every indication it's been modified, there's the presence of a pivot hole that mounts an M-16 automatic sear. The barrel has been modified by drilling holes through the sides of it. The copper mesh wraps around the barrel and the outer casing. It's very typical of sound suppressor or silencer construction.

Mr. SCHUMER. Thank you. And the other one just briefly is, it—just let me ask you, you can answer, is that a weapon, illegal, that you found at the compound?

Mr. OWEN. This is an AK-47-type rifle that has been converted to permit full automatic.

Mr. SCHUMER. Making it illegal?

Mr. OWEN. Yes.

Mr. SCHUMER. Thank you, Mr. Owen. And, Mr. Aguilera, this is what you were afraid that you might find, I guess, when you put the warrant together?

Mr. AGUILERA. Yes, sir.

Mr. SCHUMER. Thank you. My final questions are for Dr. Perry, who—Dr. Perry, you interviewed the 21 children released from the compound during the standoff. Based on your team's interviews, what type of lifestyle were the children exposed to and how healthy was this? Did the children understand who their families were? I'm going to let you finish up, so I want to ask these quickly.

**STATEMENT OF BRUCE DUNCAN PERRY, M.D., PH.D., ASSOCIATE PROFESSOR OF PSYCHIATRY AND BEHAVIORAL SCIENCES, BAYLOR MEDICAL COLLEGE**

Dr. PERRY. We worked extensively, we didn't just interview them. We basically lived with these kids for 2 months. We had a large team of experts, much—with much more expertise than the religious and the social apologists who have tried to make this sound like it was a benign religious community. I know of no religious sect that practices grooming children from the age of 4 and 5 to be sex objects of the leader. We basically—

Mr. SCHUMER. It almost defiles the name of calling it a religion.

Dr. PERRY. Well, it actually is, I think, for many people who are practicing Christians. It's very offensive to suggest that engaging in sex with children is a legitimate part of our belief system.

Mr. SCHUMER. And how about discipline, what did you find about that?

Dr. PERRY. We found the kids were inappropriately and excessively disciplined, physical discipline, that was clearly abusive. We found a whole variety of other practices which I've described in my

statement and the appendices, which I would like to have entered into the record, please.

Mr. SCHUMER. Without—I guess enter that?

Dr. PERRY. There's—other thing I found was, and I think we can't really be any more—our conclusions were very independent of the very compelling story of Kiri Jewell. We received—we came to a very similar understanding of the belief system, the apocalyptic views, the sense that there was a willingness to engage in an abstract suicide, completely independent of any information from Kiri Jewell.

Mr. SCHUMER. Two other questions. My colleague, Ms. Slaughter, in asking both Kiri and Mr. Thibodeau questions asked two things, about paddling so that the bottoms were black and blue, of very, very young children, I think 8 or 9 months was mentioned. Did you find that to be the case?

Dr. PERRY. Kids reported that and we found two of the children and all of the children, actually, very openly spoke about being paddled with the helper. Two of the children had physical lesions at the time of release after the shoot-out, where they had—initially they would not disclose what that was. Later on they told us that was from being paddled with the helper.

Mr. SCHUMER. Right. And second, the instance that was mentioned about putting a child, I think it was in a garage without—

Dr. PERRY. We heard that story from the children. We also heard many other instances of withholding food, of physical isolation, of a whole variety of inappropriate techniques.

Mr. SCHUMER. And you heard this directly from the children?

Dr. PERRY. We heard this directly from the children.

Mr. SCHUMER. So maybe Mr. Thibodeau didn't talk to enough people there.

Dr. PERRY. Well, I think the one thing that's very important to remember, is that the men in the compound were kept and lived separately from the women and children. So Mr. Thibodeau's ability to make comments about the lives of the children, I think, is quite limited.

Mr. SCHUMER. Yes. Well, thank you, Dr. Perry. I heard even you did a comparison of the children's heart beats.

Dr. PERRY. Yes, we did. We were—one of the things that has been commented on in these hearings, and by many people who do not understand what happens to traumatized kids, is that just because they are compliant and they behave well, that there's the assumption that they are mentally healthy. I think that there's no way to predict, in this room, because everybody has been essentially compliant, which one of us has been—is depressed, which person has had—is mourning the loss of a loved one, and so forth.

Children are no different than adults in their ability to hide their inner feelings. When we examined these children and looked at their baseline heart rates over the entire period of the 2 months that they—between the original shoot-out and the fire, we found that they were abnormally elevated. And this elevation was consistent with an internal sense of extreme distress, which was, we believe, was—

Mr. SCHUMER. And in your—

Mr. ZELIFF. We let you go over about 2 minutes.

Mr. SCHUMER. You're very generous.

Mr. ZELIFF. I'm glad you recognize it.

Mr. SCHUMER. I'm just wondering if the children could be characterized as traumatized.

Dr. PERRY. Absolutely.

Mr. SCHUMER. Thank you.

Mr. ZELIFF. Mr. Ehrlich from Maryland for 15 minutes.

Mr. EHRLICH. Thank you, Mr. Chairman. I want to thank everybody for appearing here today. Before I begin my question, I'd just like to make a few points. I think they're important to make.

The purpose of my questions is not to choose sides, certainly. It's not to hold up anything. I'm bad on photo ops. It's certainly not my intent to put anyone on trial with respect to their careers. Nor is it my intent to put anything on trial, including the NRA, including the Contract With America. I'm just keeping a list today, the BATF, the militias, the assault weapons ban, gun control generally.

It's not even my intent to put David Koresh on trial. I'm convinced David Koresh was a bad guy. He had sex with kids. He's a real bad guy. I'm just a freshman from Maryland. And I represent a couple hundred thousand people and a fair percentage of those people have some legitimate questions about the way this whole thing was handled. That's where I'm coming from.

I know it's Washington, it's fun to spin. I'm interested in some facts and I have some question, specific questions for you all, and I really appreciate your answers today.

My first question—and, Mr. Johnston, you touched on this with respect to a question from Mr. Barr, and I wanted to develop it further. I believe you were asked whether or not you had stated that during planning meetings with ATF you would not support the search warrant for the Davidian center unless the dynamic entry was utilized. I believe you disagreed with that testimony. I believe that testimony came from the trial. Can you elaborate further, please?

Mr. JOHNSTON. Yes, I disagree with it. It wasn't testimony at trial. It was an allegation by a defense attorney. And it was something that came up in court having to do with—it was out of the presence of the jury.

At any rate, it's been an allegation, there have been a number of allegations against me like that. The other day someone said that I suggested they call in air strikes on the compound and I put Attila the Hun to shame. And that's just as untrue, of course. But at any rate—I don't know about Attila the Hun.

At any rate, I was not involved in planning meetings with ATF as to the raid, only into the preparation of the search warrant. I did not tell them what kind of raid to do. I didn't know exactly what kind of raid they were going to do. I did know it involved cattle trailers and I did know that it was some kind of a ruse they were going to try to pull, pull in the disguise of cattle trailers. But I didn't know all the details and that wasn't my function.

Mr. EHRLICH. And—thank you for that. I have some very specific questions. I got a very specific answer and I appreciate it very much.

Second, with respect to the whole military involvement, Mr. Schumer developed this line of questioning, you would all agree, I

believe, that aircrafts from National Guard, flash bags, use of flash bags, the MP-5 rifles, et cetera, they're not specific to military-type missions. Would that be generally agreed upon? Anybody want to answer that?

Mr. OWEN. Yes, sir, that's correct. They're not specific to military applications.

Mr. EHRLICH. Sir, you would agree, however, that the use of Bradley fighting vehicles would be specific to a military mission, correct?

Mr. OWEN. My knowledge of the Bradley as a military vehicle, it's a combat vehicle.

Mr. EHRLICH. And, sir, at some point in time, ATF made a request that was subsequently withdrawn with respect to, I believe, either 7 or 10, I've read different versions of it, of requests for 7 or 10, I've read Bradley fighting vehicles with respect to a proposed raid. Is that correct?

Mr. OWEN. I have absolutely no knowledge of that.

Mr. EHRLICH. Does anyone on the panel have any knowledge of that?

**STATEMENT OF CHUCK SARABYN, FORMER ASSISTANT SPECIAL AGENT IN CHARGE, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, HOUSTON, TX**

Mr. SARABYN. I think there was an original request in our early planning for what we were going to do. We were talking about doing a siege. And at that time, there was a request that went forward.

Mr. EHRLICH. Sir, let me just follow up.

Mr. Sarabyn.

Mr. SARABYN. Yes.

Mr. EHRLICH. It's my understanding that there's no formal standard in law by which the military defines a drug nexus. It's my understanding that pursuant to law and regulations promulgated by Department of Defense or the Army, that there needs to be a drug nexus allegation prior to military involvement. Is that correct?

Mr. SARABYN. It's my understanding that, and you'll have to ask the military, which will be on later, that at the time there was a nexus request. Now, they can supply certain things. If there's a nexus, then it depends on who would pay for it.

Mr. EHRLICH. Right. Because if you get the military—if you prove the nexus, you get the military and it's free, correct? The military involvement is free?

Mr. SARABYN. That is correct.

Mr. EHRLICH. OK. Now, I guess with respect to Mr. Schumer's line of questioning, I'm confused. Because I understood the answers he received from the subsequent panel about—although he did not get into the Bradley fighting vehicles, the bottom line to his line of questioning was no military involvement, period. Yet I read in today's Washington Post that Ron Noble, Assistant Secretary of the Treasury, made this statement.

The kind of support that the ATF received from the military in this case was the kind of support you'd want them to receive. Lives were saved because of the assistance they received from the

military. Now, I realize Mr. Noble's not here. But does anyone possibly know what assistance he's referring to?

Mr. MOULTON. Yes, sir, I believe the assistance he's referring to there is probably the medical, emergency medical training that was provided by special forces to ATF agents, to ATF medics in advance of the raid. We did document in the report acts of sheer heroism by the medics at ATF at the raid. They were trained by army medics in battlefield like lifesaving techniques and certainly lives were saved as a result of that.

Mr. EHRLICH. Sir, your answer is that that quote, to your understanding, I realize he's not here, you're only suggesting a possible answer, only refer to the military training—I'm sorry, the medical training and not training with respect to training for the actual raid on the compound?

**STATEMENT OF H. GEOFFREY MOULTON, JR., PROJECT  
DIRECTOR, DEPARTMENT OF THE TREASURY REVIEW TEAM**

Mr. MOULTON. I obviously can't answer as to what Mr. Noble had in mind when he made that quote. The lifesaving assistance provided by the military that I'm familiar with is the medical, emergency medical assistance that was provided to ATF medics.

Mr. EHRLICH. Thank you. Let me switch my line of inquiry here. It appears from everything that we've been informed concerning this raid, that ATF at some point lost the element of secrecy. Koresh himself visited the—and this is Mr. Thibodeau's testimony from the earlier panel, visited his next door neighbor who stated that he believed the, quote, unquote, "college students were too old, had new cars, were probably FBI agents."

Koresh complained to the local sheriff, the UPS deliveryman was an undercover police officer. He did not appreciate being investigated. The Davidians visited their new neighbors. They were not treated as new neighbors would be expected to have been treated, et cetera.

My question really is, was there any thought prior to conducting this raid that the element of secrecy had been lost? The second part of that question is, if the answer is yes, why was the warrant attempted to be served according to the procedure which occurred? I'll let anyone answer that question.

Mr. MOULTON. Sir, I'd like to have the opportunity to answer that question. And I certainly think it's appropriate if a representative from ATF does as well. Those were really the central questions that we addressed in the Treasury review 2 years ago. And a good portion of our report was devoted to examining those questions and offering answers.

Mr. EHRLICH. Can I just—I will come back to you. I will come back to you, and I understand your role here. I would like the ATF agents present to answer the question. Then I'll get back to you.

Mr. MOULTON. Certainly.

**STATEMENT OF EARL DUNAGAN, FORMER ACTING SPECIAL  
AGENT IN CHARGE, BUREAU OF ALCOHOL, TOBACCO AND  
FIREARMS AUSTIN, TX**

Mr. DUNAGAN. With respect to the element of surprise——

Mr. EHRLICH. Yes, sir.



Mr. DUNAGAN [continuing]. On February 1, a decision was made, and I'm sad to say I was a part of that decision, to entrust the news media at the Waco Tribune Herald with certain information about our investigation. And that was because they continued to make contact with folks in the U.S. attorney's office and other law enforcement agencies with the threat to break a series of articles about the Branch Davidians that they had been working on for a long period of time.

We met with Barbara Elmore, who I believe was a managing editor at that time. When I say we, Mr. Sarabyn and I, and we asked if we could speak with her off the record and she agreed. We explained to her that we had a very sensitive investigation going on and that an untimely breaking of the news about the Branch Davidians would certainly hamper the success of any search warrant that might come about and could and probably would put the safety, if not the lives, of both Federal agents and those occupants of the compound into jeopardy.

Ms. Elmore said, in response, that she wasn't going to make any promises, that she would talk to her supervisors at the paper and would let us know at a later time. Not to belabor this or take it too far, but on the Wednesday prior to the warrant being executed, in the afternoon at about 3 o'clock, Mr. Chojnacki met with members of the Waco news media, newspaper specifically, at their offices, and as he began his statement of appreciation for their cooperation, he was immediately interrupted by one of the supervisors there and was told that he wanted—the newsman said I want it clearly understood that this newspaper is not cooperating with law enforcement in any shape or form.

Our search was planned for March 1. We were notified after that meeting with Mr. Chojnacki and the news media that they intended to break their lead article on February 28, Sunday. We set in motion activities to back the date of the warrant execution up to Sunday, hoping that we could at least execute the warrant on the same day that the lead article came out. And then we were notified, after having made those arrangements, that the newspaper decided they would break their lead article on Saturday, which they did.

When the raid team arrived at the compound, there was news media personnel all over the area already, one of whom had been contacted by David Jones, and he, the newsman, tells David Jones, you better get out of here, ATF's fixing to raid this place. Now, when we talk about element of surprise, is the element of surprise lost when the first article comes out or is the element of surprise lost and we were unaware that the news person had told David Jones that until afterward—

Mr. EHRLICH. Sir, if I can cut you off for a second, I realize I'm running short of time. Is it your testimony that the press awaited you all when you arrived at the compound to conduct the raid?

Mr. DUNAGAN. Yes, sir.

Mr. EHRLICH. Did that give you any hint that the element of secrecy may have been compromised?

Mr. DUNAGAN. We did not recognize them as the press, as we were coming—as the raid team was coming in. They didn't recognize them as the press at the time.

Mr. EHRLICH. OK, sir, let me ask you this question. Besides the formal—besides the formal avenue of the press, did any of the other testimony produced here today or any other facts come to your attention that would have raised a question in your mind as to whether the element of secrecy had been compromised at any point prior to the raid?

Mr. DUNAGAN. If you—when we talk about the element of secrecy as opposed to the element of surprise, element of secrecy about our raid, we didn't feel was compromised at that point.

Mr. EHRLICH. OK. So your testimony is that you all believed, and I'm just trying to get your viewpoint here, prior to that raid, so 10 seconds prior to the beginning of that raid, you did not feel as though the element of secrecy or surprise had been compromised; is that correct?

Mr. DUNAGAN. No, that's not correct, sir. Ten seconds prior to the raid, I feel like the secrecy was lost at that point.

Mr. EHRLICH. OK.

Mr. ZELIFF. Your time is expired.

Mr. EHRLICH. Thank you. I'll have an opportunity to follow up. Thank you, Mr. Chairman.

Mr. ZELIFF. We're going to have to recess. I believe there are two votes. If you'll be patient, we appreciate that. And we'll be back 5 minutes after the second vote.

[Recess.]

Mr. ZELIFF. The subcommittees will come to order. The gentleman from Oklahoma, Mr. Brewster, has 15 minutes.

Mr. BREWSTER. Thank you, Mr. Chairman.

As one who happens to believe that ATF and FBI do an awful lot right, probably 90, 95 percent of your cases are never heard of by the media or by the average American, my main interest in this is trying to figure out what went wrong in the deal.

I think that some of my colleagues here are attempting to play a role. I can assure you I am playing no role. I want to know as much as I can about the information, and hopefully, we can do some things differently next time so we don't ever again have a repeat of Waco.

Mr. Dunagan, do I understand that you contacted the National Guard concerning possible use of helicopters because there was some methamphetamine lab on the premises?

Mr. DUNAGAN. No, sir. My first contact with the National Guard was for aerial photography work. My initial memorandum made no mention of a drug nexus. I even instructed one of the agents that made personal contact with those representatives, Jose Viegna, to make sure that he told them that at that point we had no drug information.

At a time later we had learned—in fact, it was within a couple of days after that, the date of that particular memorandum—we learned that at some time in the past that a disassembled methamphetamine laboratory had been seen by one of the Branch Davidians who left, who was away from the compound; and that a statement was made by Vernon Howell that he had called the sheriff's office and had abandoned that methamphetamine lab facility to them.

There was—the person telling us the story said that they never saw that abandonment take place. We checked with the sheriff's office. They had never received a methamphetamine lab from anyone from the compound and that's how that came about.

Mr. BREWSTER. OK. Who was first contacted by the deputy sheriff? You, Mr. Aguilera?

Mr. AGUILERA. Yes, sir, I was.

Mr. BREWSTER. Is it common to be contacted by a deputy sheriff as opposed to the sheriff or under sheriff?

Mr. AGUILERA. Well, actually, sir, the information was given to me on paper by Special Agent Charles Meyer out of the Austin office who, in turn, received the information from Lieutenant Barber.

Mr. BREWSTER. Is it common, do any—have you ever been contacted by a deputy sheriff as opposed to the sheriff?

Mr. AGUILERA. Sure. Yes, sir. It is common.

Mr. BREWSTER. Well, I guess I'm thinking back to Oklahoma where we had a sheriff that a deputy attempted to frame with the FBI a couple of years ago.

At any rate, were all of you involved or any of you involved in the decision on dynamic entry?

You are the top ranking man, Mr. Hartnett, are you not?

**STATEMENT OF DAN HARTNETT, FORMER DEPUTY DIRECTOR FOR ENFORCEMENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. HARTNETT. Yes, sir, I was advised of it.

Mr. BREWSTER. You were involved in the decision on dynamic entry?

Mr. HARTNETT. I approved the plan, which—the term “dynamic entry,” I really don't know a good definition for it.

Mr. BREWSTER. Nor do I.

Mr. HARTNETT. But the raid plan, yes, sir, I am the person who approved it.

Mr. BREWSTER. What about the rest of you, did you have any involvement in making—helping make the decision on the way that we addressed the problem there?

Mr. SARABYN. As far as the dynamic entry or——

Mr. BREWSTER. On dynamic entry.

Mr. SARABYN. Well, there was really a panel of several SAC's, which are special agents in charge, several assistant special agents in charge, several of our SRT team leaders which discussed the various options, or whatever, and came to the conclusion to do the dynamic entry.

Mr. BREWSTER. I happen to be one who is convinced, myself at least, that Mr. Koresh was a bad guy. I am convinced that he had altered some weapons. From the testimony we have heard, you certainly have to believe there were some child abuse cases and some others. But it's hard for me to understand how you arrived at the decision of dynamic entry.

Isn't it true that Mr. Koresh went to town on a fairly regular basis?

Mr. SARABYN. He'd been there on several occasions.

One thing that has been misunderstood, I think, for the last couple of years is, during this investigation, we determined that at the

compound machineguns were being manufactured, and explosive devices.

Our goal through this investigation was to execute a search warrant on that house to obtain those illegal weapons. Other people were involved in the manufacture and possession of those. The arrest of Koresh was just a side issue. If we arrested him, we still had to do the search warrant on the house.

As you know, it turned out there were machineguns and handgrenades.

That was our goal. We knew that machineguns were being manufactured. We had to get in there one way or another. If we arrested him off, we still had to do the search warrant.

A lot of people have felt, you know, that the whole thing was to arrest David Koresh. That was not our goal.

Mr. BREWSTER. Was there anyone else anywhere in the group that had the charisma, the leadership ability of a David Koresh to convince people who are engineers and lawyers to follow him in some of the crazy things that were done here?

Mr. SARABYN. There were several professional people in there, but he was very charismatic, and they followed him.

Mr. BREWSTER. So is there any reason to believe that, had you arrested him, it would have not been fairly easy to do the rest of it?

Mr. SARABYN. There are two things that could happen. If we arrested him, he could have turned into a martyr, and then they would say, they have taken our leader. Here we have all these machineguns and handgrenades. He's taught them for years, you know the time has come and you know—

Mr. BREWSTER. You could have lost a whole bunch of people?

Mr. SARABYN. Yes.

Mr. AGUILERA. If I may, Mr. Brewster.

Mr. BREWSTER. Yes.

Mr. AGUILERA. Another point I would like to make out here is that Koresh was observed outside of the compound on two occasions. One was, I believe, January 17, 1993, and the other February 24, 1993.

Mr. BREWSTER. Which was—what—4 days before the raid?

Mr. AGUILERA. No, sir. That was 17th. This was maybe weeks before the raid.

Mr. BREWSTER. I thought the raid was the 28th.

Mr. AGUILERA. The 28th. February 28.

Mr. BREWSTER. I'm sorry. I thought you said February 24.

Mr. AGUILERA. I'm sorry. February 24, yes, sir.

Mr. BREWSTER. So that's 4 days before.

Mr. AGUILERA. I'm sorry. I made a mistake here. But we didn't actually obtain the warrant—the warrant wasn't issued until February 25.

Mr. BREWSTER. But you started planning this clear back about 6 months ago, right? The actual planning, the way I read it, started in December on the dynamic entry, the raid on the facility.

Mr. SARABYN. We started planning it in December, but at that time we were planning for a siege, we were not planning to do a dynamic entry.

Mr. BREWSTER. At what point did you determine to do the dynamic entry?

Mr. SARABYN. It was in January.

Mr. BREWSTER. And you brought special response teams in, right?

Mr. SARABYN. Their team leaders come in. And that's what I said, we had these meetings for months that we went through and basically we weighed the options of assault versus the siege and we got a lot of new information that kind of put us over the hump.

But if we did a siege, one thing, as you've heard some of the testimony today, mass suicide. As we talked to everybody, David was on the interviews. We had our SRT team leaders' goals. There was a big fear of everybody that there would be mass suicide.

Second, you know, if we tried to do a siege, we knew that there were machineguns in there; we knew that there were handgrenades. They would have a long time to prepare. In other words, by doing a dynamic entry, they wouldn't have time to prepare. We knew that they had supplies of food and water that could last for a long time. We knew——

Mr. BREWSTER. What is a long time?

Mr. SARABYN. I think they had MRE's for 3 months and, you know, their own water well. We knew it would be a disruption to the community, you know, if you did that. It would be a long-term financial commitment. You know, Koresh is in control. If you do a siege, you know, he calls the shots, you know.

We were concerned about the sexual abuse, that this was going on, that would continue on. We were concerned about the destruction of evidence, you know, that if they made those machineguns, if they made those handgrenades and we said, hey, we're here to do a search warrant, come out, and they don't come out, they could take them apart as quickly as they put them in.

As it turned out, every one of these things happened. And that was one of the reasons we switched from the siege to the——

Mr. BREWSTER. Mr. Sarabyn, when you have special response teams, isn't it generally in response to people being heavily armed? Don't you generally really bring them——

Mr. SARABYN. That's when we would use those? Yes, we would——

Mr. BREWSTER. When someone is heavily armed?

Mr. SARABYN [continuing]. In a high-risk situation. They are very highly trained individuals, and we use them as safety both for the people and for the agents because——

Mr. BREWSTER. They are well armed themselves?

Mr. SARABYN. Pardon, sir?

Mr. BREWSTER. Are the special response teams well armed themselves?

Mr. SARABYN. Yes, sir, they are.

Mr. BREWSTER. What is their ordinary armament?

Mr. SARABYN. Their 9-millimeter standard gun and then an MP-5 or, you know, maybe a shotgun depending on where they were going or what the specific, you know——

Mr. BREWSTER. So what we've heard then about some of the agents only having 9-millimeter sidearms is not correct?

Mr. SARABYN. Some of them only had 9 millimeters; they had the option. Each operation, they kind of plan out what they think they'll need or whatever.

Some—some that day—we knew obviously that there was women and children and there was some expression by some of the undercover agents that we may have to get in a fist fight with some people or whatever. So some of them were actually concerned that they didn't take a second gun that they actually had there because if they got into a fight they didn't want to be trying to hold one gun or whatever.

Mr. BREWSTER. If you are going into a well-armed situation, why would you not arm them completely to the best of anything possible?

Mr. SARABYN. Well, I mean, there were so many things to consider here. There were women and children. You know, we knew that they were separated. We had, you know, teams to fight in different areas to take care of that. But you know, you need to have, you know, the weapons that you need; but we didn't feel they would be armed at that time or where we would, you know, need them.

Mr. BREWSTER. If you stage this at 3 in the morning, why wouldn't that have been a better time for surprise than 10 in the morning? The men and women were separated 24 hours a day.

Mr. SARABYN. There wasn't a lot of light inside the compound, and normally we do execute our warrants first thing in the morning. We're talking about 8 or 10 agents going into a room or a house where maybe there's four or five people.

We estimated that there was 75 people in there. We knew there was 100-plus members, but they always, you know, came and left and there wasn't a solid number. We're sending 75 agents into a building and you get inside, going in different directions, it's dark, one round goes off. And you know, we had a real concern that the women and children or whatever, we wouldn't see who shot where or whatever, and it could turn into a tragic incident.

Mr. BREWSTER. The more I listen, the more I can't understand why David Koresh was not arrested outside. You used flash-bang grenades at the start of it, correct?

Mr. SARABYN. The only—there was no plan to just use them. When upstairs, which people have seen the video on TV where there's the two rooms where they are going into. One of those rooms was David Koresh's bedroom. The other room was his armory where they had the machineguns and the handgrenades in there.

They were going to look to see if anybody was in there. Before they can throw it, they have to make sure there is nothing flammable and then they throw it in. It's really just a distraction device. It makes a loud noise and it's a flash. The purpose is not to harm anybody or whatever, but just to stun them for a second so you can get in and safely—it's for their protection and for the agent's protection. It is not a defensive type of weapon.

Mr. BREWSTER. Mr. Hartnett, there is a rumor, surely it's unfounded, that the publicity person or public relations person for ATF had released some kind of a press communication the night

before to media around the country that something big was going to come down in Texas.

Mr. HARTNETT. Yes. And we heard that, and the person—I believe her name is Sharon Wheeler—she’s testified before committees, and she just did not give any information out about Waco, TX, at all. She was—she was in Dallas and she called—called a reporter to ask if he was going to be in, or called two reporters, I’m not quite sure, I don’t recall, but—and said are you going to be in, we’re going to have something coming up in the next day or two. As I recall, that’s how it came out. She never mentioned Waco.

Mr. BREWSTER. Why did she do that?

Mr. HARTNETT. She wanted to be able to get a hold of them if there was a story and they recovered these arms. Now, this all came up after the fact that we heard this and it came out at hearings before.

Mr. BREWSTER. Wouldn’t there be ample time after they were recovered?

Mr. HARTNETT. Oh, yes, but what came out—it didn’t come out the way—you know, she was accused of calling them and saying there is going to be a raid at Waco tomorrow, and that’s just not what occurred.

Mr. BREWSTER. It’s always easy to look at something in hindsight. Hindsight is 20-20, foresight isn’t nearly that good. But when you’ve had 4 Federal employees killed, 20 wounded and a large number of civilians that were killed in the process, I’ve got to think you’re looking forward to making some changes in the way that you would do things in the future.

Have those changes been made to make sure that a Waco never happens again?

Mr. HARTNETT. I’m retired now and—

Mr. BREWSTER. You don’t have to worry about that anymore?

Mr. HARTNETT. Well, I still worry about it.

Mr. BREWSTER. I understand.

Mr. HARTNETT. I still worry about it. I worry about it every day of my life. I think there are changes. I see things that happened in Waco that we should have done differently. I think those agents within ATF are some of the best equipped, best trained, most professional law enforcement people in this country and always have been and I think always will be. I think that their dedication, you know, going in there that day, they felt they were well prepared and they felt they were doing the right thing. And we need to correct the things that went wrong there and there were things that went wrong.

Mr. BREWSTER. On the helicopters—that just occurred to me—that were flying that day, were they National Guard or were they Army?

Mr. HARTNETT. National Guard.

Mr. BREWSTER. Did the Governor give permission to use them or who had done that?

Mr. HARTNETT. They come out of the J—

Mr. SARABYN. Joint Task Force 6.

Mr. BREWSTER. They were Texas Air National Guard?

Mr. HARTNETT. Yes, sir.

Mr. BREWSTER. Under the Governor’s direction?

Mr. HARTNETT. That's correct.

Mr. BREWSTER. So the Governor had given permission to use them?

Mr. HARTNETT. Yes, sir.

Mr. BREWSTER. OK. You mentioned, too, about the training of your forces. Now, I understand they are well trained, yet do I understand that the Army spent 3 days or more working with them as well?

Mr. HARTNETT. At Fort Hood, we had asked to use the facility down there so everyone knew where they were going in the plan, and the military actually gave advice on things they saw that they—at the time we should change or whatever.

But it was not that we asked them to come and give us training. It was, we were borrowing their facility, to use that to have a mock-type situation so that there could be some training and everybody would be familiar where everybody else was going during the raid.

Mr. BREWSTER. And you had approximately 100 BATF personnel there?

Mr. HARTNETT. I think pretty close to it. Yes, sir.

Mr. SARABYN. I think it was like 80 actually there at Fort Hood.

Mr. BREWSTER. So you were expecting problems bringing that large a force in; is that correct?

Mr. HARTNETT. I don't think we were preparing for any event. There was in the plan things that took—it was so spread out, the compound, and so large that we wanted to make sure that we could separate and get those guns separated before anybody could get to them. We wanted to make sure that we would get them in before the——

Mr. BREWSTER. When the element of surprise was lost, who made the decision to continue?

Mr. HARTNETT. The commander in charge of the raid.

Mr. BREWSTER. And that was?

Mr. HARTNETT. Well, I don't know if the commander knew he lost the element of surprise, and that is Chuck Sarabyn here.

Mr. BREWSTER. Did you know about the loss of the element of surprise, Chuck?

Mr. SARABYN. First of all, as far as the element of surprise, it has been an issue that has been also popped around in the newspaper or whatever for years. And there appears that at some level there was an order given or someone told somebody, you know, not to go if you lost the element of surprise.

Mr. BREWSTER. Let me see if I can understand this in my mind. Somebody goes up to the door, knocks on the door with a search warrant in their hand. Is there someone else standing there with a weapon as well?

Mr. SARABYN. In this particular incident?

Mr. BREWSTER. Yes.

Mr. SARABYN. I was not at the front door, so I can't——

Mr. BREWSTER. But somebody, some ATF agent goes to the front door, knocks on it with a search warrant in hand and says, we're here to arrest David Koresh and search the building. Am I correct?

Mr. SARABYN. Right. They would say to execute a search warrant, I believe.



Mr. BREWSTER. There's another guy standing here with a weapon or is the guy by himself?

Mr. SARABYN. That I don't know.

Mr. HARTNETT. I think, sir, at least what I've been told is that——

Mr. ZELIFF. Mr. Brewster, your time is up. If you can kind of condense and bring it together quickly.

Mr. HARTNETT. I have been told as our people came up in front of the compound and were disembarking that David Koresh was standing in front of his front door and——

Mr. BREWSTER. Outside.

Mr. HARTNETT. Outside by the door and that two different agents, I believe it was two, called, Federal agents with a search warrant. He stepped back inside and the agent who was there in the front door or by the front door was wounded. The fire just came right out and shot the agents.

Now, Mr. Johnston was there at the trial and heard all the testimony and could probably——

Mr. BREWSTER. But those agents were armed themselves as well?

Mr. HARTNETT. Yes, they were.

Mr. BREWSTER. Thank you, Mr. Chairman.

Mr. ZELIFF. Thank you.

The gentleman from North Carolina, Mr. Heineman, for 5 minutes.

Mr. HEINEMAN. Thank you, Mr. Chairman.

I would like to continue this line of questioning but I see here that day two covers the planning of the raid, so I will restrict myself to the intelligence-gathering prior to that meeting where the raid was planned.

I did read this book by Mr. Noble, the report of Department of Treasury on the Waco incident. And of course he will be here on the 4th or 5th day to answer questions, but in that book on page 9, it indicates that the Treasury Department stated that they chose not to try to lure David Koresh away from the compound because intelligence reports he rarely ventures off compound grounds. That's found on page 9.

And certainly today we have heard conflicting testimony from someone—Mr. Thibodeau, from in the compound. And I would like to—I would like to address to Mr. Sarabyn or perhaps the agent himself as to when that house, that observation house was set up outside the compound.

Mr. SARABYN. The house was started up in January. In some of the conflicting reports, as far as what you're hearing on how many times he was off, the surveillance at the beginning was for 24 hours, and then it broke down to where they were just basically doing it from sunlight to late at night.

Obviously, there were several vehicles in there. The surveillance house actually, I believe, only saw him one time leave, as far as the agents observing him leave. There were cars going and coming. Obviously, he could have been in a car and they didn't see it.

There was also conversation with the undercover agent that, you know, he doesn't go off the compound. He said he was getting paranoid about law enforcement or whatever. So the combination of the information we had at the time was that we only observed him the

one time and what he had told the undercover agent, you know, we didn't feel that he was going off the compound.

Mr. HEINEMAN. Who was in charge of that house?

Mr. SARABYN. There were several agents there. Dale Littleton was actually to supervise the undercover agents, and then he was under Earl and then Earl would report to me and then Dale would also call me with information directly.

Mr. HEINEMAN. Where did that flow of information terminate? Did that stay with you in the Waco area or did it go—

Mr. SARABYN. No, it would—after the reports would be put on an ATF form, 3270.2, which—it would come through Earl, then it would come to me. And this was distributed to all the SAC's, all the ASAC's, all the different SRT team members, so they got all the information.

And then any time that we had a plan as far as meeting in a group of 15 or 20 to discuss both the case and what we were going to do tactically, Dale would come and represent the, you know, all the undercover agents and give us a briefing on what was going on.

Mr. HEINEMAN. What use did you make of the local agencies, either the Texas Rangers or the sheriff's department, relative to intelligence?

Mr. AGUILERA. I spoke to DPS intelligence and obtained information, information that I already had and secured. I requested information through headquarters. Most of the information that I had, or that they had, I had already been provided with. So there wasn't much they could give me other than what I had.

Mr. HEINEMAN. OK. Let me at this point—I pretty much touched on what I want to touch on. The previous gentlemen took some of what I was going to ask. But at this time, I'd like to yield the balance of my time to Mr. Barr to continue his line of questioning.

Mr. BARR. I appreciate the gentleman from North Carolina.

Mr. Johnston, following up just briefly on our line of questioning earlier and my concern over destruction of evidence or nonproduction of evidence, there apparently was a settlement agreement in the Chojnacki case. Are you familiar with that? And the reason I am asking is, apparently the settlement documents provided for destruction of certain discovery files, and I'm wondering if you're aware of that.

Mr. JOHNSTON. Chojnacki had like a civil service claim; is that—

Mr. BARR. Right.

Mr. JOHNSTON. I know nothing about that at all. I guess that's something that Treasury handled.

Mr. BARR. Would that be unusual, if there is a case handled not by the civil service but by its successor agency, the Merit System Protection Board, and as part of a settlement—in this case, reinstatement with back pay—that documents would be destroyed, including in this case apparently, or perhaps, documents relating to possible wrongdoing? Would that be something that would concern you as a government attorney?

Mr. JOHNSTON. Well, if you're saying, destroyed as in all destroyed, no copies, well, then that obviously concerns me, because you don't have any—there's no evidence. So I don't—I guess I've never heard of that process.

Mr. BARR. Well, I hadn't either, but then again, I haven't heard of the documents that I showed you earlier. But that would concern you as a prosecutor?

Mr. JOHNSTON. Yes, sir.

Mr. BARR. OK. Thank you.

I appreciate the gentleman from North Carolina.

Mr. ZELIFF. The gentleman's time has expired.

The Chair recognizes Mr. Ehrlich, the vice chair of the subcommittee, for 5 minutes.

Mr. EHRLICH. I'd like to direct—I have 5 minutes so I would appreciate—I'll try to frame my questions concisely; I'll appreciate concise answers.

Mr. Aguilera, did any person in a supervisory chain above you ever ask you to gather information with respect to the issue of arresting Koresh outside the compound?

Mr. AGUILERA. The information—I didn't—they didn't request from me to obtain the information, to try and arrest Koresh outside, no, no, sir.

Mr. EHRLICH. OK. Now, earlier today Mr. McMahon testified that you specifically declined an offer from Koresh over the telephone that he—wherein he allegedly said, come visit, I'll show you the guns. Is that a true statement of fact?

Mr. AGUILERA. That's true, that's a true statement. However, the only reason I didn't want to talk to Koresh was because I had prior knowledge and information that Koresh had dealings with McMahon, and I wanted to further check his records in order for me to find out whether or not Koresh was dealing without a license.

Mr. EHRLICH. So you thought that offer was premature at the time; that's why you declined the offer?

Mr. AGUILERA. Yes, sir; yes, sir. It would have been nonproductive for my case, for my investigation.

Mr. EHRLICH. Thank you.

Mr. Sarabyn, my question to you, sir, is, did you ever have occasion to draft a memo wherein you suggest that Koresh be arrested outside the compound?

Mr. SARABYN. I don't remember drafting a memo. I do know that we did consider it and tried two or three options to try to do that. But I don't remember drafting a memo.

Mr. EHRLICH. So your recollection is, you did not actually draft the memo, but is it your—I don't want to put words in your mouth, but is it your recollection that you remember observing or reviewing a memo?

Mr. SARABYN. We considered and actually tried to do a couple things where we could arrest him, off. But I don't remember or recall preparing any memo.

Mr. EHRLICH. And there came a point in time where that option was rejected, correct?

Mr. SARABYN. We actually—one of them was to go through the Health and Human Services, where they would call him off and say, you know, we want to talk to you or whatever. And we went and talked to them.

They said, well, he doesn't show up for 3 or 4 days, and we couldn't plan when. Which I tried to explain earlier, no matter

where or when we arrested Koresh, we still had to do a search warrant on the compound. And we knew that would involve a lot of people. So, you know, like with the health—they declined at the end, but had we done that, you know, we couldn't have sat around with a hundred agents for 5 days until he showed up, because we would have still had to execute the search warrant on his house.

Mr. EHRLICH. Sir, is it fair to say that at some point in time you changed your mind with respect to the appropriateness of arresting Koresh outside the compound?

Mr. SARABYN. Yeah, I would say—when I'm talking of our decisions, there's a group here of about 15 or 20 people that would discuss this, you know, at various times; and yes, we did change. He was from the undercover and we had—as Davey got information, some of the people that had left the compound, still had people on the compound, or whatever; and the sense was that he was getting, you know, very paranoid and not trusting his own people or whatever.

Mr. EHRLICH. Thank you.

Mr. Hartnett, two questions real briefly. Is it your testimony, sir, that the element of surprise was lost prior to the raid on February 28?

Mr. HARTNETT. I have, of course, heard "the element of surprise" since the day after the raid.

Mr. EHRLICH. Yes, sir.

Mr. HARTNETT. Prior to that time I never heard the term "element of surprise." The—whether or not that—and Mr. Chojnacki, of course, was the SAC in Houston; and I've asked him many times since the raid, did you feel the raid was compromised when you went in, and he has said, no, to this day. And I believe him.

Mr. EHRLICH. Thank you, sir.

Sir, earlier you testified that mistakes were made. In the remaining time that we have—and I realize it's very easy, as has been repeated many times here tonight, it's very easy being a Monday morning quarterback—what would you have done differently in retrospect?

Mr. HARTNETT. There was a—when the undercover agent came out of the compound and met with—well, I thought he was going to meet with Chuck Sarabyn. When I was briefed, he was going to come out and let Chuck know the status after the Waco Trib had come out, were they going, were they getting out guns, were they going to battle stations, that type of thing.

At the time of the briefing, I never asked the question as to how they were communicating. They communicated by a phone. The most important conversation we had in this entire raid took place over the telephone between the undercover agent and Mr. Sarabyn. I didn't ask the question at the time the plan was given to me. If I had have, or if I had thought of it, that would never have happened. They would have met in person, they would discuss what they saw, there would have been no communications gap between what the undercover agent saw and felt and what Chuck was thinking.

That, to me, was a serious mistake, and I didn't catch it at the time.

Mr. EHRLICH. Mr. Chairman, I know my time is up. Are you finished with your answer, sir?

Mr. SARABYN. Yes, sir.

Mr. EHRLICH. Thank you.

Mr. ZELIFF. Mr. Taylor from Mississippi, 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. Aguilera; is that right?

Mr. AGUILERA. Aguilera, yes, sir.

Mr. TAYLOR. I'm sorry?

Mr. AGUILERA. Aguilera.

Mr. TAYLOR. Aguilera. In page 19 of this it talks about your conversation with Deputy Barber, who unfortunately has already left us, talking about an attempt by Koresh to kill George Roden, or Roden, his predecessor preacher he replaced at gunpoint.

Do you feel like there was adequate evidence given to you by Mr. Barber that this actually took place, that he ran off the previous preacher at gunpoint, actually shot at him, that he was found hiding behind a tree?

Mr. AGUILERA. Yes, sir, I read the report.

Mr. TAYLOR. You believe that to be true?

Mr. AGUILERA. Yes, sir.

Mr. TAYLOR. Did that influence your decision on how you were to serve this warrant, the fact that this man had been shown to have violent tendencies and the use of firearms even against another preacher?

Mr. AGUILERA. I had no—I didn't partake in the planning of the raid or the execution of the warrant.

Mr. TAYLOR. Did that influence your decision or the decision—do you feel—OK. Let me go a little bit farther to page 27.

Again, these are statements attributed to you, but not direct quotes. It says Aguilera sought information from former cult members who gave him some insight into the extraordinary degree to which Koresh dominated the lives of compound residents. Cult members surrendered all their assets to Koresh and permitted him to have sex with all female members of the cult. While Koresh—while reports that Koresh was permitted to sexually and physically abuse children were not evidence that firearms or explosives violations were occurring, they showed Koresh to have set up a world of his own where legal prohibitions were discarded freely.

Do you believe that to be an accurate statement?

Mr. AGUILERA. According or from the information that I had received from former members, it was placed in my probable cause, in the affidavit, yes, I do believe it was true.

Mr. TAYLOR. Do you think that in fairness to the four officers who lost their lives and the 20 officers who were wounded, in fairness to their widows, in fairness to the two children who will not now have a father, that maybe some of these things ought to be brought to the attention of this committee? And do you think that in fairness to those people, this series that was about to be printed in the Waco Tribune, and has since been printed, should be entered into the record?

Mr. AGUILERA. Yes, sir.

Mr. TAYLOR. Don't you think that in fairness to the ATF agents, that you should be treated the same as every criminal, and that

at least you're given the presumption that you're innocent until proven guilty?

Mr. AGUILERA. That we should be treated as criminals?

Mr. TAYLOR. No, sir, I think you should be treated at least as well as the criminals in this country, and given the presumption that you're innocent until proven guilty and given the opportunity to prove yourself innocent.

Don't you think it would be fair for this committee to do that?

Mr. AGUILERA. Yes, sir.

Mr. TAYLOR. And don't you think it would help your case if you were able to talk about the events that led up to the raid?

Mr. AGUILERA. Yes, sir.

Mr. TAYLOR. OK. My final point I'd like to make is, after talking to Deputy Barber, at some point in those conversations, did he request or did a member of the sheriff's department request the help of the ATF, or did the ATF just on their own decide that they were going to descend upon Waco, TX, and pick on some poor country preacher?

Mr. AGUILERA. I did the complete investigation on my own. I didn't request any assistance from the sheriff's office, except for the intelligence that I had been receiving from them.

Mr. TAYLOR. I think the question was the other way around. Did the sheriff's department at some point request your help?

Mr. AGUILERA. Yes, sir, they did initially.

Mr. TAYLOR. So you did not just pick Waco off the map of the United States and decide you'd go down there?

Mr. AGUILERA. No, sir.

Mr. TAYLOR. You were requested by a local governing authority, the law enforcement authority—

Mr. AGUILERA. Yes, sir.

Mr. TAYLOR [continuing]. To come down and help them?

Mr. AGUILERA. Yes, sir.

Mr. TAYLOR. Do you think that ought to be included in the record?

Mr. AGUILERA. Yes, sir. In the raid?

Mr. TAYLOR. Don't you think we ought to talk about the events that led up to this—

Mr. AGUILERA. Yes, sir, sure.

Mr. TAYLOR [continuing]. So the people will know that? Because I can assure you there are a heck of a lot of people in this country who think that y'all just picked that town and that preacher. I don't think that's fair to the four men who died.

Mr. AGUILERA. No, sir, it's not.

Mr. TAYLOR. I don't that it is fair to the 20 men who got wounded.

Mr. AGUILERA. No, sir.

Mr. TAYLOR. Is there anything else you would like to say, Mr. Aguilera?

Mr. AGUILERA. No, sir.

Mr. TAYLOR. OK.

Thank you very much, Mr. Chairman.

Mr. ZELIFF. Thank you. The gentleman's time has expired.

Ms. Lofgren of California, you have 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

Dr. Perry, I read through all of the material you've provided about the evaluation of the children who were evacuated by yourself and the team, and also the transcript of your transmittal—I think of March 11, if I'm reading the date correctly—to the FBI, where you recount the status of the children.

Can you tell this committee what your impression was about the level of sexual molestation going on in the compound after you had examined these children, as well as what information you had gathered from them about explosive materials, weapons and things of that nature; and what of that did you transmit to the FBI?

Dr. PERRY. We—within the first week after working with these children in a variety of ways it became clear that there were two primary areas of secret that they wanted to keep from the Babylonians, the nonbelievers, who we were in their minds. These included, over time—as these kids slowly revealed in a variety of ways what these were, they included two major themes. One was that there was this—and they had been told that people would not understand this special relationship that they were going to have with David.

Ms. LOFGREN. And of course they were right in that regard.

Dr. PERRY. The sexuality, the fact that sex was openly talked about, that young children were exposed to inappropriate sexual content, and that by the age of 12 all children were considered adults and all girls were therefore available to David for his wife.

As we heard today, obviously the age of 12 is pushing the limit. He clearly partook his pleasures in younger children as well. At that time, it was also clear that these kids looked at us with smugness and said, well, you'll see what will happen and you don't know what's going to happen, and——

Ms. LOFGREN. Could I specifically ask a question on the—I wasn't very direct.

On the second page of your memorandum you talk about one child—that the children knew beyond what their years would indicate about weapons and one young boy in particular discussing his grenade—the grenade launcher. Was that——

Dr. PERRY. These children knew a lot more about guns than you would expect for children this age. Children as young as 6 years old would pick up a toy wooden gun, pull the bolt back, weigh it as if getting the balance, look down the barrel and say, this isn't a real gun.

[The prepared statement of Dr. Perry follows:]

PREPARED STATEMENT OF BRUCE DUNCAN PERRY, M.D., Ph.D., ASSOCIATE PROFESSOR OF  
PSYCHIATRY AND BEHAVIORAL SCIENCES, BAYLOR MEDICAL COLLEGE

My name is Bruce Duncan Perry. I am a physician at Baylor College of Medicine in Houston, Texas where I specialize in child and adolescent psychiatry (see Attachment 1 and 2). My area of clinical and research expertise is in the emotional, behavioral, cognitive, social and physical effects of traumatic events on children.

In early 1993, we had developed a 'rapid response' Trauma Assessment Team at Baylor College of Medicine specializing in early assessment, intervention and treatment of children following an acute traumatic event -- such as a shooting. The specific goals of this team were to utilize proactive, preventative interventions to decrease the well-known, long-term problems associated with childhood exposure to severe trauma.

Following the original ATF raid (February 28, 1993), where approximately fifty children were present during the 'shoot-out', our team offered assistance to the Texas Child Protective Services (CPS). Within a few days after the initial raid, our team began an active leadership role and ultimately organized and led the multi-disciplinary, inter-agency treatment team which worked with the 21 children released from the Branch Davidian Compound following the ATF assault.

This treatment coalition was comprised of the Trauma Assessment Team (volunteers from Texas Children's Hospital, the Houston Veterans Affairs Medical Center and Baylor College of Medicine, all in Houston), the Methodist Home in Waco, the San Antonio Baptist Home for Children and staff members of CPS. All of the time of the Trauma Assessment Team from Baylor College of Medicine was generously donated by the individual members of the team and by the parent institutions at which these volunteers worked (Baylor College of Medicine, Texas Children's Hospital and the Houston VAMC). Our clinical and administrative activities were all focused on directly helping these 21 children, planning for the release of the remaining children and, to the degree possible, influencing the actions of other agencies and adults interacting with these children to be as sensitive and respectful of the children's needs as possible.



CIVITAS ChildTrauma Programs

**THE DAVIDIAN CHILDREN (n = 21)**

*Released over a three day period*

*5 mos. to 12 yrs. of age at time of release*

*Representing 10 family clusters*

*17 of 21 had at least one sibling*  
*who was also released*

Bruce D. Perry, M.D., Ph.D.

In this capacity I worked directly with these children for hundreds of hours over a two month period. Members of our treatment team spent, collectively, thousands of hours in direct contact with these children. Indeed members of our team were with these children during all of their waking hours, providing primary caretaking needs for the children.

Utilizing a variety of evaluation and assessment techniques (described in the Attachments) we came to learn a great deal about these children and about their lives in the compound. In addition to the extensive contact with these children, we had the opportunity to interview many members of the Branch Davidian Community and family members of Branch Davidians in the compound (see Attachment 3).

Based upon this extensive and prolonged clinical contact and upon significant collateral corroboration, our treatment team concluded that **these children were being raised in an abusive setting. Ranch Apocalypse, by 1992 and through 1993, was clearly a psychologically destructive environment for children** (see Attachment 3).

It was also clear that these children were profoundly traumatized by the original shoot-out and the fire which destroyed their friends, families and the world as they knew it (see Attachments 4 and 5).

These views were clearly articulated to the press in a one hour press conference televised by CNN and attended by dozens of national press. At the time of the press conference (May 4, 1993), copies of the attached appendices were made available to the press. It has been unfortunate that the work of our team and the impressions we made have been dramatically distorted by various media or popular accounts where the authors have had a political agenda.

As the issues of 'life in the compound', 'child abuse', and the FBI's use of 'experts' in this tragic event have been actively debated, and as our work with these children had direct bearing on facts related to all of these issues, I feel it is important that this committee have the opportunity to hear about our experiences with these children, with the FBI and our impressions based upon these experiences.

#### **ABUSIVE CHILDREARING PRACTICES AT RANCH APOCALYPSE**

- ◆ Destructive characteristics of this setting included undermining traditional parent-child relationships by David Koresh. Attachments to parent figures were continually undermined and replaced with inappropriate dependence upon a central figure, David Koresh. Continuous undermining of other relationships, including sibling relationships, husband and wife relationships, and friendships was pervasive. Any attachment judged to be more important to an individual than the attachment to God or David was undermined. By 1992, these children were taught to view David Koresh as their father, and later, these children were taught to consider David as God (see slides). In the context of this evolving theology, Koresh's views became increasingly restrictive, unpredictable and harsh for the children living at Ranch Apocalypse (see Attachment 7).
- ◆ These children had a set of inappropriate and age-inappropriate behaviors and significant gaps in general understanding, reflecting the idiosyncratic teaching practices present in the compound. For example, very young children, including a six year old girl, knew an incredible amount about weapons, while they knew almost nothing about other common age-appropriate concepts. In one example, we had a room with a variety of toys, including a small bolt action toy rifle. Invariably, in the first visit to the room, each child first went over

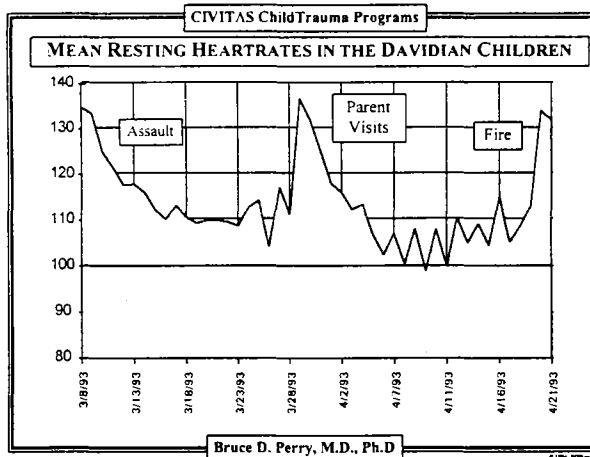
and picked up the rifle. In one interview, a young girl went over, picked up the rifle, pulled the bolt back, looked down the barrel and said with disgust, "This isn't a real gun."

- ♦ It is clear that these children were significantly traumatized by previous harsh and inappropriate disciplinary techniques including severe corporal punishment, extended isolation (overnight), severe food restrictions and separation from primary caretakers. These children were continually exposed to harsh, capricious, and humiliating disciplinary techniques. Children expected to be beaten for events such as spilling milk. Infants were severely spanked for 'misbehaving'. In addition, these children were threatened with death if they revealed aspects of life inside the compound to the 'non-believers'. As is typical when an abusive adult threatens a child, they were told that 'they will not understand our special ways'. These children were convinced that David Koresh would return from the grave and punish them if they betrayed the Davidians by interacting with, or disclosing to, the 'bad guys' (law enforcement, non-believers, 'Babylonians').
- ♦ Koresh was exploitive and manipulative of these children and exposing them to a variety of inappropriate sexual content -- such as graphically describing intercourse and sexual 'technique' in his hours-long sermons where children were present. Furthermore, the girls were socialized to believe that sex with Koresh, by age 12 (and earlier), was normative, appropriate, and, indeed, desirable -- being part of God's plan as revealed to David. All of the young girls were being prepared to be David's wives and that was a healthy and desired position to be in. One of the older girls expressed distress, now that she had been released from the compound, that she would not be able to be picked by David as one of his brides. Clear and compelling disclosure of sexual abuse of a 10 year old child by David Koresh was obtained during this time. This child had left the compound in the year prior to assault. The nature of the disclosure, the content and detail of the abuse all were very consistent with the content of sexual beliefs which were shared with our team by many of the 21 released children.
- ♦ These children were significantly exploited, manipulated and exposed to a variety of inappropriate experiences and deprived of other normative experiences. These children were very rarely given the opportunity to be independent and when they did make any independent decisions about any aspect of their lives, including things as small as choosing what they would eat, who they would sit next to at dinner or choosing what clothes they

would wear, David Koresh would periodically challenge, provoke and demand that they change what they were doing -- for example, he would demand that someone eat only potatoes for the next three days. Because of the lack of opportunity to make independent decisions about even minor aspects of their lives, these children experienced significant abnormalities in areas of functioning which are globally called ego function. This includes things such as sense of self, self-esteem, dependence/independence and abstract thinking. This was illustrated by a poignant series of drawings by one child (see slides).

### IMPACT OF THE ATF ASSAULT ON THE CHILDREN

- ♦ The 21 children released from Ranch Apocalypse were significantly traumatized by the assault. They demonstrated this in a variety of re-enactment behaviors in the presence of cues associated with the assault, including white vans or a helicopter. This was most dramatically illustrated by the profound increases in resting heartrate observed in all of the children throughout the six weeks of the standoff (see Figure 1). Five days after the original raid, the group average resting heartrate was 134 (the group average should have been approximately 80). In the middle of the stand-off, many of these children visited with a parent released from the compound. These visits resulted in dramatic changes in the children's behavior (e.g., return of bed-wetting, hiding under beds, aggressive behavior) and in their resting heartrates, indicating that these visits were, in some regard, distressing to the children. Based upon how the children acted and upon what they told us, we interpreted this distress as being due to a reminder that the children were 'in the hands of the Babylonians', inducing fear and confusion. When these visits stopped, the children improved. When they were told about the fire, as one would expect, their distress increased dramatically. It should be noted that the normal resting heartrate for a group of comparison children is approximately 90 beats per minute -- the Davidian children for the entire period of the stand off and beyond never had resting heartrates below 100.



Because of their experiences in the compound and because of the assault on the compound and the ensuing separation from, and death of, all their loved ones, these children are indelibly changed. Their lives have forever been altered and while they may have many areas of normal functioning, certain areas of potential have been lost.

### COMMUNICATION WITH THE FBI

From the beginning of our work, a liaison relationship with the FBI was established. Initially this was a series of meetings, by March 14, however, one specific agent was assigned as a liaison to the treatment group. During this liaison relationship a number of relevant opinions were communicated.

- ♦ The children shared a common belief that they would be assaulted and that the compound would be destroyed by "Babylonians" or unbelievers. The children had a practiced and consistent theological view that they all would be attacked and that the outsiders would kill everyone in the compound and that Koresh would come back and kill the bad guys uniting everyone in Heaven. This view was apparent within a few days of working with these

children. It was verbally expressed and was a constant theme in many of the children's drawings and much of their play. Many of the children expressed the belief that David was God or the Son of God (see slides).

- ◆ The view that there was a group consensus regarding a final apocalyptic end was shared with the FBI both at a meeting and in the form of a memo which was dictated and given to the FBI on March 11, 1993 (I did not see the transcribed copy of this memo until after the fire: Attachment 6). Opinions regarding the care of these 21 children as well as other aspects of our work which impacted the FBI were communicated to the liaison FBI agent from this point on. After the FBI began playing 'music' all night, I expressed to our liaison agent, that I felt this action was counter-productive and reflected a profound misunderstanding of David Koresh and the current 'state of threat' that this community was operating in. A meeting with the Behavioral Science/Hostage Negotiation Team was arranged.
- ◆ At this point in the crisis (approximately the end of March/early April) I met with the FBI's Hostage Negotiation Team and gave my opinions regarding aspects of David Koresh's belief system and mental state, and that of the Branch Davidian group. Among the impressions I shared with the FBI was the opinion that Koresh and some of the Davidians were capable of an 'abstract' suicide by precipitating a final confrontation. It was my view that while many of the Davidians might leave the compound should the situation become de-escalated, it was my opinion that a core of the strongest believers (including the Mighty Men) would be much less likely to leave.
- ◆ At the time, I was unsure of exactly how the FBI was viewing Koresh, although I assumed by their actions that they were discounting the opinions that I was providing. It was only after the fire that I began to learn some of the internal debates regarding the psychological profile of Koresh and the approach to this crisis that was taking place between the FBI's Behavioral Science team and the Tactical team members.
- ◆ I have no idea how our views regarding abusive childrearing practices at Ranch Apocalypse were used in the decision-making process for the FBI's final tear-gas assault or whether any of our opinions were used for decisions regarding the other tactical or negotiation approaches used by the FBI during the stand-off.

**SUMMARY**

In summary, our work demonstrated 1) an abusive and psychologically-destructive living situation for children at Ranch Apocalypse, 2) a pervasive belief by the Davidians that this was the final battle long predicted by Koresh, 3) a belief system capable of an 'abstract' suicide and 4) a 'negotiation' process which resulted in Koresh and the Davidians feeling increasingly under threat -- under siege, thereby making rational decision-making on the part of Koresh or the Davidians increasingly difficult.

All of these opinions were shared with the FBI in either written form or face to face meetings with members of the FBI Hostage Negotiation team. While I am unsure of how this information was used (or misused), the complexity of this event and the tragic loss of human life require that we do more than the usual political posturing when we examine all of our actions at Waco.

In this regard, let me emphasize that, despite what religious and social apologists say, any adult who grooms children to be his sex objects is sexually abusing those children. Sex between an adult and a child is abusive. Sex between an adult and an 11 or 12 year old child can not be consensual. The fact that the name of God and religion were used to obscure this exploitive and abusive practice make these activities even more heinous and destructive to the long term development of these children. The fact that responsible adults, either parents or 'academics', would minimize these activities is shameful. David Koresh systematically exploited the members of the Branch Davidian community, slowly but surely coercing that community to play out the tragic and destructive visions of his disturbed inner world.

**A final tragedy of this event will be that we, as a society, do not review our actions at Waco with clear, harsh and self-critical vision. The lives lost at Waco and the lives indelibly altered by that series of events cannot be changed but they will be diminished and disrespected if we choose not to learn from Waco's many lessons.**

Ms. LOFGREN. Could I ask, Mr. Johnston, were you aware of this information about the evidence of the children as to weapons and possible violations when you reviewed the information in seeking the warrant?

Mr. JOHNSTON. There was some information. Joyce Sparks spoke with a young child that said, I can't wait until I'm a man, something of that nature. And she said, Why? He said, Because then I'll get a long gun. That in and of itself may not mean a machinegun, but it indicated the kids had knowledge of guns.

As far as the question concerning sexual abuse, the Kiri Jewell story we did know.

Ms. LOFGREN. Let me ask finally—then I want to yield to Mr. Scott—Mr. Sarabyn, you mentioned that you were aware that there was sexual abuse going on in the compound as you were readying for the final days. I wonder if you could tell me, you take an oath to uphold the law, and the law that you're upholding is to enforce alcohol, tobacco and firearms. So as a law enforcement officer, was it in your mind that little girls were being raped inside the walls of this compound while you were, and the rest, were waiting to execute this warrant? Was that a factor in timing it, even subconsciously?

Mr. SARABYN. Definitely as a law enforcement officer, as a human being, it was inside of you. I heard the testimony earlier today, and as we interviewed these people and we heard those stories—I mean, we had talked to her before, so—

Ms. LOFGREN. And you, I guess, had seen the Sinful Messiah story. Mr. Chairman, I wonder if we could ask unanimous consent to put this news article in the record.

Mr. SCHIFF. Reserving the right to object, and I ask—

Ms. LOFGREN. The Sinful Messiah article in the Waco Tribune Herald that's been referenced several times.

Mr. SCHIFF. Is it—reserving the right to object, is this a—this is an article that appeared before the raid on the—

Ms. LOFGREN. Yes.

Mr. SCHIFF [continuing]. On the compound? Does it mention anything about firearms violation?

Ms. LOFGREN. I think it talks about the sexual abuse. That, I think, was in the minds of the agents, as human beings and law enforcement officers, and was a factor and an understandable one, if I am hearing Mr. Sarabyn correctly, as to timing.

Mr. SCHIFF. Continuing my reservation, do the agents have anything in writing, any memos from this particular time that demonstrate that because of alleged sexual abuse, that motivated their thinking about the planning of this firearms law enforcement raid? Because this is the first I've heard—

Mr. SCHUMER. Would the gentleman yield?

Mr. SCHIFF. I yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman.

This article, which occurred the day before the raid, which was published by the Waco whatever, Herald something, Tribune Herald, which was published a day before the raid, plays a very important role in what happened in a variety of ways. If you read the report of ATF, there's a whole chapter on it. Because—and this is an important question, we will deal with it today and tomorrow.



One of the—the timing of the—the ATF people went to the Waco Herald Tribune, Tribune Herald, and asked them to not run the article. When they decided they would run the article, they moved the date up. It may account for some of the speed with which the raid went.

I think any of the gentlemen who were involved will back me up that this was an extremely important article in terms of what happened. And by all means, it should be in the record, whether it mentioned firearms or not.

What is also important here is what ATF thought, correctly or incorrectly—and we can debate that—is that the publication of the article would influence Koresh's state of mind and that was an important factor in determining when and how to do the raid.

Mr. SCHIFF. Reclaiming my time, I understand the gentleman's point. But continuing my reservation for the moment, I've asked two questions and would be grateful if the person offering this into the record or one of the witnesses can clarify it.

My first question, very simply, is, does that article have anything to do with firearms violations?

Ms. LOFGREN. I think it does, yes.

Mr. SCHIFF. OK.

The second is, with respect to the references in that article to sexual abuse and now the testimony that because of this sexual abuse that motivated the ATF to have to do this raid all the faster, I do have one question—

Ms. LOFGREN. If I may interrupt, I don't think that was the testimony, sir.

Mr. SARABYN. That was not my testimony.

Mr. SCHIFF. I'm sorry, I did not mean—I did not mean to alter your testimony. I'll let you phrase it. It's getting kind of late for all of us, so I apologize if I've misstated anything.

Mr. SARABYN. The article thinks—or made us move the raid up, OK. She asked me, as a person, did I have a feeling that—I knew that sexual assaults or rapes were going on in the compound; did that affect me as a human being? I said, yes, as a law enforcement officer, whatever, I had a feeling about that.

Mr. SCHIFF. As a law enforcement officer do you have anything in writing from right before the raid that indicated the raid had to take place in a certain way, at a certain speed, because of your concern as a human being about child sexual abuse?

Mr. SARABYN. No.

Mr. SCHIFF. Thank you. I think I made my point, Mr. Chairman, about the documents. I think the point's been made in its favor. We have been letting in about everything, to be fair, so I will withdraw my reservation.

Mr. ZELIFF. Without objection, so ordered. When received, it will be entered into the record.

Ms. Lofgren, you have 2 minutes left.

Ms. LOFGREN. Thank you, Mr. Chairman. At this point, I would like to yield the balance of my time to Mr. Scott.

Mr. SCOTT. Thank you. I thank the lady from California. Excuse me.

Mr. Johnston, have you ever gotten evidence in court under the good-faith exception to the exclusionary rule?

Mr. JOHNSTON. I have had a judge rule in the alternative that evidence would be admissible under that.

Mr. SCOTT. Say that again.

Mr. JOHNSTON. In other words, I've had courts rule that there was probable cause, but if the appellate court would find not, then the agent had good faith, then relying on it—in other words, an alternative finding. But I don't think I've had to rely entirely on it.

Mr. SCOTT. Have you had evidence excluded from court because it had been illegally obtained?

Mr. JOHNSTON. No, sir.

Mr. SCOTT. Do you know of any evidence that's been offered in your jurisdiction where the evidence was found to be illegally obtained and was excluded?

Mr. JOHNSTON. I don't recall any in the Waco division. The Western District of Texas is huge. I'm sure there has been somewhere, but not in our division that I recall.

Mr. SCOTT. Let me ask Mr. Aguilera, do you have any problem obeying the law?

Mr. AGUILERA. Sir?

Mr. SCOTT. Do you have any problem obeying the law?

Mr. AGUILERA. No, sir.

Mr. SCOTT. Are you aware of any officer who's been sanctioned for illegally obtaining evidence?

Mr. AGUILERA. No, sir.

Mr. SCOTT. So the exclusionary rule is about the only sanction we have against officers violating the law?

Mr. AGUILERA. I'm not—

Mr. SCOTT. The evidence, if you illegally obtain evidence and it's not admissible in court, that's about the only sanction you've heard of for illegally obtaining evidence?

Mr. AGUILERA. Yes, sir.

Mr. ZELIFF. The gentleman's time is up, if you could finish.

Mr. SCOTT. And it's the only sanction we have and only protection we have against law enforcement officers breaking the law?

Mr. AGUILERA. Yes, sir.

Mr. SCOTT. Thank you.

Mr. ZELIFF. Thank you.

I yield—the Chair yields to the gentleman from Arizona, Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. Before I start my questioning, let me make a couple of statements. I spent 8 years as a prosecutor, 8 years with the Arizona Attorney General's Office.

Mr. ZELIFF. I apologize, I've got two people talking in my ear. By prior arrangement, can I just hold you up for a second?

Mr. SHADEGG. Certainly.

Mr. ZELIFF. Can we shift back over to Jackson Lee of Texas?

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I would like, Mr. Chairman, if I could raise a question with the Chair, so that my questions will be understood by the witnesses. I want to ask questions and I will ask the witnesses to give me yes or no answers.

I want to make it clear that I'm not in any way trying to limit their response as much as I am trying to get a number of questions in. And I wanted to make and clarify my particular questions.

Let me also, Mr. Chairman, before my time starts—I see that it has—I was asking you to allow me do that before my time starts, to thank Cardiss Collins on the record for yielding time to me previously.

Mr. Moulton, you've had to be exceedingly quiet over there, so let me try to cull from you some of the concerns that I have. It seems that little Kiri Jewell said it all when she was trying to suggest that a lot of people were trying to get things out of this and we just need to fix it. I hope that if we can all eliminate the garments of hypocrisy, that that is what we're trying to do is to fix it. So it's my understanding that there was an investigation that proceeded for how long, Mr. Moulton?

Mr. MOULTON. Approximately 5 months, investigation conducted by the Treasury Department.

Ms. JACKSON LEE. Can you tell me what this book is, Mr. Moulton?

Mr. MOULTON. That is the Treasury Department report, issued in September 1993 that addresses virtually all, if not all, the questions—

Ms. JACKSON LEE. You went beyond a yes or no.

Mr. MOULTON. I'm sorry, I will do my best to say yes or no.

Ms. JACKSON LEE. That's all right. Did you participate in this inquiry?

Mr. MOULTON. Yes, I was the project director of that investigation.

Ms. JACKSON LEE. In the course of trying to review extensively what occurred in this tragedy, loss of lives of adults and children, loss of lives of our law enforcement officers, I want to get right to the point of focusing on corrective measures.

In this document, is there a corrective measure that says, let us eliminate a portion of the exclusionary rule, meaning that search warrants are not good anymore, let's base them all on good faith? Is that in this document?

Mr. MOULTON. There is no suggestion of alteration of the exclusionary rule in the document, no.

Ms. JACKSON LEE. So that worked for you in terms of this document?

Mr. MOULTON. That's correct.

Ms. JACKSON LEE. We had a problem, as we've heard some of the witnesses testify, at a point when there was no retreat. This is a point when we heard possibly that someone tipped the media. In this report, do you have at least a suggestion of some intervening factor or line authority that would have given the opportunity for fair analysis so that a possible retreat could have occurred, therefore saving lives?

Mr. MOULTON. The report discusses the importance of an operation like this being reviewed at the Treasury Department substantially in advance of the raid, rather than 48 hours before the raid, as was the case here.

Ms. JACKSON LEE. One of the things that I heard also mentioned, because the American people need to know, we hold in high regard this whole idea of religion and respect for people's differences. I've heard the Seventh-day Adventist Church being mentioned. And I would wonder in this particular document, for it is quite distin-

guishable from a religion and a cult, do we have in this document any suggestion of further training or enhanced training for our law enforcement agencies about cults?

Mr. MOULTON. The document addresses the need for law enforcement agencies to consult experts in organizations or groups like the Branch Davidian before they conduct—or in order to evaluate the information that they're being given by members of the cult and by others.

Ms. JACKSON LEE. You think cults are different from religion?

Mr. MOULTON. I think that Dr. Perry expressed the difference quite well earlier.

Ms. JACKSON LEE. Mr. Chairman, I have a joint statement of Mr. Rosedale, president, American Family Foundation; William Rehling, president of Cult Awareness Network. You had indicated to me, Mr. Chairman—I hope I can have a moment while the clock is stopping—that we would be open to potentially having witnesses come in and talk about issues that have longstanding impact on our ability to reform. I'd like this statement submitted for the record, but I'd like the opportunity to raise with the committee the possibility of a cult expert coming in and testifying, Mr. Chairman.

I ask unanimous consent.

Mr. SCHIFF. Raising the right to object, reserving the right to object, the document is what, I ask the gentlelady from Texas?

Ms. JACKSON LEE. It's the joint statement of the president of the American Family Foundation and the president of the Cult Awareness Network. It is relevant, Mr. Schiff, and I appreciate your inquiry, because one of the suggestions was that our law enforcement agencies, in terms of reform and correction, needed additional training in cult awareness, for they may come upon these kinds of groups across the Nation. And, of course, that played into the tragedy that occurred.

And this document is simply a report on cults and it also addresses the particular incident in Waco.

Mr. SCHIFF. Continuing my reservation, first I believe that Dr. Perry is on the board of this organization and he has been a witness here at this proceeding. He did not get the opportunity to evolve his testimony?

Ms. JACKSON LEE. Mr. Perry, I don't think—that's Dr. Perry, am I correct?

Dr. PERRY. That's Dr. Perry. And I'm not on the board. I'm on the Research Advisory Board for the American Family Foundation, which is comprised of six academics or seven academics. It's not—that's the extent of my relationship with those organizations.

Mr. SCHIFF. All right. Well, continuing my reservation if I could just ask, does the lady—is the lady offering this document? Does that mean that we are committed to the idea that the Branch Davidian group was a cult?

Ms. JACKSON LEE. I don't offer it in that capacity at all, Mr. Schiff. I offer it as an explanatory document. I don't think it's a truth or a veracity question.

Mr. SCHIFF. I withdraw my reservation.

Mr. ZELIFF. As far as the admission in the record, without objection, so ordered.

As far as a potential witness, as we talked about earlier, we would certainly be willing to consider it.

[The prepared statement of Messers. Rosedale and Rehling follows:]

PREPARED STATEMENTS OF HERBERT L. ROSEDALE, PRESIDENT, AMERICAN FAMILY FOUNDATION (AFF) AND WILLIAM REHLING, PRESIDENT, CULT AWARENESS NETWORK (CAN)

Crime (of the Committee on the Judiciary)      National Security, International Affairs, and Criminal Justice (of the Committee on Government Reform & Oversight)

Chairmen and Members of the Subcommittees:

We appreciate the opportunity to submit this written statement for the record of your Joint Congressional Oversight Hearings on the tragic incidents in February and April 1993 involving agents of two federal law enforcement forces, the followers of David Koresh and Mr. Koresh himself. There are important lessons to be learned. We feel confident that you will provide information and insights for law enforcement agencies, Congress and the public.

AFF and CAN

Both CAN and AFF are non-profit, independent, national public interest organizations recognized by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code. Both favor widespread study and understanding of destructive cult practices. Neither promotes any sectarian or theological position. Both respect the vital importance of freedoms of religion, speech, assembly and of due process of law.

AFF works through committees of volunteer professionals and academicians in various fields, including education, law, law enforcement, medicine, mental health and religion. It publishes the *Cultic Studies Journal*.

CAN is a membership organization, principally of family and friends of people recruited into cults. It has 16 affiliates located in metropolitan regions around the country.

Cults and Law Enforcement Problems

The American public recognizes that cults can present serious community and law enforcement problems. Millions of Americans recognize a cult when they see one and are disturbed by what they see. It is high time that government also recognizes that specific, identifiable characteristics of certain groups can lead to violations of the human rights of the group's members, their families, and others, and foster a climate of lawlessness that requires attention.

America concentrates on cult problems every time we are dismayed by some terrible result here

or abroad. However we also need attention to prevention: what may be done in the future.

Some of these disturbing issues require law enforcement attention by federal agencies (as well as state and local law enforcement agencies).

Dealing with suspects who are cultists requires cult-specific expertise. Law enforcement agents, who risk their lives to protect public security, should have the best understanding possible and the best experts available to assist them.

Waco suggests some opportunities to improve law enforcement as regards suspects who are cultists. These hearings should help strengthen law enforcement when it must confront future situations like Waco.

#### Cults Have Harmed Many Americans

Americans share concerns about cults because cults have hurt so many people. Freedom-loving, law-abiding Americans who have been hit by cult phenomena, both the estimated two to five million former members of cultic groups and their millions of family, neighbors, co-workers and friends, have every right to expect Congress to look hard and carefully at this phenomenon as it affects law enforcement and other aspects of our national life.

#### CAN and AFF Had No Role at Waco

Cult apologists have contended that the "anti-cult movement" somehow "prepared" our FBI "for this moment" at Waco.<sup>1</sup> That is preposterous.

Neither CAN nor AFF was consulted by the ATF or the FBI during or prior to any of their actions at the Mt. Carmel complex outside Waco. Neither CAN nor AFF recommended the tactics used. Actually, in a statement issued the day after the FBI raid, AFF questioned FBI psychological warfare and sleep deprivation tactics.<sup>2</sup>

Well-financed organizations widely regarded as cults, as well as cult apologists, have circulated lies ascribing federal law enforcement tactics to CAN and/or AFF.<sup>3</sup> These falsehoods fool some and endanger innocent people.

AFF and CAN do not promulgate a false view of cult behavior, manipulation and destructiveness. Cult leaders do deceive, manipulate and destroy. Some cult leaders have chosen murder and suicide and other unlawful conduct. Take, for example, the leaders of the Solar Temple in Switzerland and Quebec just a few months ago. Or take Jim Jones's Peoples Temple in Guyana in 1978 where Congressman Leo J. Ryan was murdered and more than 900 followers of Jones's and their children were murdered or committed suicide. See "Children of Jonestown" in *Singer CULTS IN OUR MIDST* (Jossey-Bass 1995), pages 249-51 (reproduced with permission and attached to this statement). There are good reasons, therefore, to keep an eye on a group such

as the Aum Supreme Truth organization in our country, given the allegations that it used poison gas to kill and terrorize in Japan.

#### Criminal Activity by Cults Is Nothing New

Waco was not some new, out of the blue phenomenon. Criminal activity repeatedly crops up among totalist groups commonly identified as cults. Examples of pre-Waco violent crimes include:

- \* California murders in 1969 by the Charles Manson "family";
- \* Michigan conviction in 1983 of Black Hebrew House of Judah leader for enslaving children and causing death of 13-year-old John Yarbrough;
- \* Oregon conspiracies by Rajneesh followers to poison town water supply of The Dalles in mid-1980s;
- \* Nebraska conviction in 1986 of a white supramacist leader of first degree murder for torture-killing of James Thimm, who doubted the leader's divine messages; and
- \* Ohio sentence to death of Jeffrey Lundgren in 1990 for killing a family of five, bound and gagged, because they were about to defect; Lundgren's follower-accomplices were imprisoned.

There are serious cult-related crimes every year.

Is there any wonder? Cult leaders who demand total obedience, who instill the belief that they are above the law, who pressure the followers to perform, but not to think for themselves, are liable to drive their followers to break the law, violently or otherwise.

#### What We Mean by "Cult"

By "cult" we refer to psychologically manipulative groups that may be religious or non-religious (e.g., psychotherapy, political, or commercial). More specifically, a cult can be defined as a group or movement that, to a significant degree,

- (a) exhibits great or excessive devotion or dedication to some leadership, idea, or thing,
- (b) uses a thought reform program to persuade, control, and socialize members, (c) systematically induces states of psychological dependency in members, (d) exploits members to advance the leadership's goals, and (e) causes psychological harm to members, their families and the community.<sup>4</sup>

Cults need not be religious. The elements of deception, manipulation and blind devotion to the



leader can attach to other groups as well, such as certain self-improvement trainings or, even, magazine-selling scams.

Cults can change. They may start benignly as community or religious or group therapy organizations. Then, gradually, a leader may take advantage of followers, make them dependent and take control of their lives.

Psychological techniques that turn free people into cultists can work very quickly. At a vulnerable point in his or her life, many a well-brought-up, law-abiding citizen can be turned into a cultic follower whose capacity for critical thinking is greatly reduced. If the subcommittees review the evolution of the Branch Davidians at Waco, you may identify these elements in the group and the relationships which David Koresh took over, shaped, controlled and directed.

#### Law Enforcement Aspects of Cult Concerns

Cult characteristics have significant implications for law enforcement work. Cultists may behave differently from terrorists, hostage takers, con artists or other personalities that police are trained to recognize.

Cults cover a fairly wide spectrum of abusiveness and disrespect for the law. Members of groups most likely to pose law enforcement problems are likely to be self-righteous idealists under excessive psychological influence. They will believe that their leadership's commands override the law and that the unenlightened -- non-members -- are inferior beings, perhaps even enemies, who need not be treated as totally human.

- \* Such cultists therefore may lie and deceive.
- \* They may disregard apparent self-interest, even self-preservation (not only their own, but their children's as well).
- \* Such cultists may suppress human feelings towards outsiders.
- \* Cultists think about and express some key concepts in loaded language, with secret meanings that outsiders (including law enforcement personnel and assorted academics) do not initially understand -- usages which may confuse attempts at communications.
- \* Ex-cultists may be reluctant to cooperate and testify. Embarrassed and fearing public stigma, they may wish to hide past cult involvement. Furthermore, they may fear cult retribution based on threats or examples made of others. They may ascribe great and frightening powers, even magical powers, to a leader who may punish them in terrible ways. Cults have used emotional and social blackmail to discourage cooperation with law enforcement, and have used information obtained confidentially from cult followers as a lever against them in order to prevent their disclosure of information harmful to the cult.

Some cults bankroll themselves by means of illegal activities, including burglaries and gun running, immigration law violations and fraudulent sales. Such cults have plenty to hide and may become quite adept at cover up and disguise.

#### Crippling Lack of Research; Need for More Training

For more than 15 years, federal research has avoided cult-related issues, apparently because of concerns that such research might interfere with religious freedom. Dr. Frederick K. Goodwin, Director of the National Institute of Mental Health, informed Congress in 1994 that NIMH has not supported or sponsored research or other activities on "cults" or "totalist groups" since 1978-1979.<sup>5</sup> Following the Jonestown, Guyana, tragedy, the NIMH began, but abruptly terminated, plans for a research program. NIMH formed its plans in response to the House Committee on Foreign Affairs, which "recommended that a concentrated program of research and training for mental health professionals be developed under the auspices of the NIMH." Dr. Goodwin explained that NIMH had planned a series of meetings with three purposes: (1) to delineate and evaluate existing research in the field; (2) to identify areas of non-existent or inadequate research knowledge; and (3) to assess mental health implications, if any, associated with membership in various "cults" or "totalistic groups."

However, "strong controversies" led to "abrupt termination" of NIMH's initiative in June 1979, "at the request of the Office of the Secretary, HEW." Even though the focus of the meetings "specifically eschewed addressing issues of religion or belief," Dr. Goodwin reported that controversies focused on the appropriate role of Government regarding research on "minority religions." As a result, NIMH funded no research or other efforts over the entire 15 years from Jonestown to Waco. More recently, NIMH has stated a readiness to entertain research grant applications, but no commitment of effort by NIMH's own staff.<sup>6</sup>

Lack of research means that both the civilian public and law enforcement lack the valuable tools that increased understanding might bring. Training is less advanced than one might hope.

Even the medical profession is woefully unequipped. A recent survey of Pennsylvania doctors by the Medical Society of that State revealed that over 20 per cent of the profession had encountered the cult phenomenon (19 per cent in their practices; 2 per cent in their own families), but two thirds found themselves ill prepared to help.<sup>7</sup> The schools that train health care providers and their in-service training programs rarely prepare those practitioners.

Do the police and other law enforcement academies and in-service training programs do better?

We know of only a handful of in-service training programs to alert local police in the United States and Canada to law enforcement implications of destructive cults. Sporadic training is not enough. A more comprehensive approach, with federal participation, seems in order.

The FBI Academy at Quantico, Virginia, may have developed a state of the art capability as

regards cult and cult-like situations in its Behavioral Sciences Department. We hope that Academy staff and consultants have done so. However, our information about the Academy's present capabilities is limited. It is unclear what expertise the FBI has within. The FBI's outside consultants during the siege at Waco do not have a reputation as experts on behavior of cultists.<sup>8</sup> So we are not certain and hope that these hearings will shed light on existing capabilities and possibilities for improving and strengthening them.

#### A Question of Law Enforcement Focus and Coordination

We also hope these hearings and their aftermath will make clear where the focus of federal law enforcement responsibility lies and how it ties into a national capability in which federal, state and local law enforcement agencies can support and learn from one another.

Moreover, we ask that you identify and evaluate the links (if any exist as regards law violations by cultists) among federal law enforcement agencies and other parts of the national government. Do they interact (a) during a law enforcement crisis and (b) on planning, prevention, deterrence, and rehabilitation? Coordination interactions might include law enforcement agencies and U.S. Attorneys, U.S. Attorneys and the Criminal Division at Department Headquarters, law enforcement agencies among themselves and with prisons, mental health and behavioral sciences research agencies, and education and training agencies. Eventually, there may also be reason to review, more broadly than these hearings contemplate, other aspects of national policy with respect to totalist cults.

#### Attorney General Reno's Unfulfilled Commitment to Seek Expert Advice

During Congressional hearings on April 28, 1993, the Attorney General committed herself, in colloquy after colloquy, to seek the views of all possible experts in order to shed light on cultist behaviors that might have law enforcement implications and promised, in her opening statement, to have experts inside and outside Government examine:

how should Federal law enforcement agencies marshal resources in various disciplines, including psychology and psychiatry, in situations involving cults and other groups using barricades and holding innocent people?<sup>9</sup>

When it came time to appoint outside experts for advice, however, the Department of Justice included *no one in its roster who had any professional or academic experience in dealing with or studying the behavior of cults and cultists*. And it changed the terms of reference to omit even the word "cult", generalizing, instead, to "Dealing with persons whose motivations and thought processes are unconventional" -- thereby throwing together into one pool psychotics, terrorists, cultists, extremists, and all manner of other unconventional people.<sup>10</sup> As a result, the Justice Department failed even to consider the possibility that cultists might pose distinctive and pertinent law enforcement problems.

None of the four experts appointed to address that "unconventionality" issue had dealt with cults and cultists. None even set forth the case -- based on the literature or experience of others -- that cultists might possibly pose distinctive and pertinent law enforcement problems.<sup>11</sup>

Why did the Department of Justice exclude expertise about cults? What became of the Attorney General's commitments to consult all the experts she could find?

### Recommendations as to Law Enforcement

The law enforcement community needs a cult information resource available to federal agencies, state and local police and appropriate coordination. Before the next crisis, America should have a team, housed within law enforcement.

- \* adequate to do a job of preparation, training and planning,
- \* with appropriate access to the tactical and supervisory levels, and
- \* drawing upon studies and research.

The job includes the following:

Resource bank. Find out who claims expertise as to cult phenomena. Identify recommended experts both within and outside law enforcement. Critically appraise everyone. (That includes both experts that AFF or CAN might recommend and their critics, among others.) Develop internal assessments as to which experts seem most reliable and for what purposes.

Strategic planning capability. (1) Plan how law enforcement, when confronted with a particular cult situation, can best learn from former members, family or friends of present members, clinicians and others who have dealt with the group (as well as any other kinds of sources the team concludes could help). (2) Review previous experiences of serious law violations involving cults and learn how leaders and followers reacted, what worked, what failed. Invite outside viewpoints, as part of such review, and conduct a vigorous internal debate.

Training. Train law enforcement authorities who are most likely to have to deal with cults or cult-like groups on psychological dynamics of cults. Periodically update training to incorporate improved state of knowledge.

Also necessary are:

Access and attention. When a crisis breaks out, or seems to be impending, the responsible law enforcement agency can determine which of its agents has developed tactical readiness. The agency should be able to turn to the national resource team to provide strategic input and guidance, as well as to any other such teams in particular agencies, states or regions. The on-site tactical team and its supervisors at all levels should accept and use strategic input and guidance -- although ultimate responsibility will have to remain on-site and in the chain of command.

Research. Congress should insist upon, and the national research team should draw upon, a strong research program for both law enforcement and civilian purposes. Such research should in no way compromise our national commitment to freedom of religion, speech and assembly and to due process.

End Notes

1. Melton and Criner, "What the Hearings May Tell Us / Did the Federal Authorities Heed the Wrong 'Experts'?", *The Washington Post*, Outlook Section, July 2, 1995, p.C3.
2. AFF explicitly conceded that the outcome might have been just as bad even if the FBI's tactics had been oriented to the cult mindset throughout. Rosedale and Langone, "How Many Jonestowns Will It Take?" (20 April 1993). Earlier, on March 30, 1993, AFF and CAN said in a statement to Congress:

The unfortunate situation concerning the Branch Davidians in Waco, Texas underscores certain important facts about cults that should not be overlooked. First, the leader's psychological control over the group members can be so powerful that the group essentially becomes a projection of the leader's psyche. The future of David Koresh's followers depends upon how rational Mr. Koresh is with regard to the question of remaining alive. If he decides he does not want to live, the probability is that his followers will die with him. The dependency that cult leaders induce in their followers has grave consequences -- after leaving the cult as well as while in it.

The second fact highlighted by the Waco situation is the risk cults often pose to the health, and sometimes even the lives, of children. Four features of cults tend to increase the risk to children: (1) Cults frequently live by an absolutist ideology that dictates harsh physical discipline and the rejection of professional medical care. (2) Cults' hierarchical structure and their setting themselves up as "family" frequently turn parents into "middle management" with regard to their own children, a subservient role that can become especially dangerous when the leader measures the parents' dedication by their willingness to abuse their children at his or her request. (3) Cults often are closed, physically isolated societies that resist any investigation of possible child abuse. (4) Cults that are religious in nature (some cults form around psychotherapists or political leaders) can further resist official scrutiny by invoking the First Amendment.

Hearings on Health Care Reform before the Subcommittee on Health, Committee on Ways and Means, House of Representatives, 103rd Congress, First Sess., Serial 103-14, pp. 753-54.

3. A notoriously deceptive and defamatory video exposé, put out by Indianapolis attorney Linda Thompson, baldly asserted CAN instigation and involvement at Waco. The Church of Scientology promoted and showed Thompson's video. Emory University sociology professor Nancy Ammerman presented the story in a report requested by the Departments of Justice and the Treasury which these Departments distributed widely. (She later retracted part of her accusations and narrowed the scope of others, but they are still being quoted.) Journalists Alex Cockburn in *The Nation* and Lawrence Criner in *The Washington Times* echoed these erroneous charges (which the latter found it could not corroborate). The Unification Church, publishing denials of any child abuse at Mt. Carmel, baselessly claimed that "the real answers point directly to CAN" as the source of all the allegations about Koresh, that CAN exploited "its own blunder in Waco" and that CAN is "leveling similar charges against local churches across the country" to "destroy religious freedom in America." The Lyndon LaRouche movement falsely claimed that CAN officials

"were central to the plans drafted by the ATF." Two publicists who are active with the New Alliance Party circulated to Congress and the media a report, "What is the Cult Awareness Network and What Role Did It Play in Waco?" Their report relied on Linda Thompson, organizations created or funded by the Church of Scientology and the Unification Church, long-time cult apologist Dean Kelley, and others who would minimize public concern about destructive cult phenomena. *The Washington Post* picked up the Big Lie on July 2, 1995, (see note 1.), and National Public Radio repeated it on July 9, 1995.

4. Langone, M.D. (1933). RECOVERY FROM CULTS HELP FOR VICTIMS OF PSYCHOLOGICAL AND SPIRITUAL ABUSE. W.W. Norton & Company. Page 5. See report *Cultism: A Conference for Scholars and Policy Makers*, sponsored by AFF, The Neuropsychiatric Institute of the University of California at Los Angeles and The Johnson Foundation, convened at Wingspread, Racine, Wisconsin, September 9-11, 1985.

5. Letter dated June 23, 1993, from the Director, National Institute of Mental Health to the Chairman of the Subcommittee on Health and the Environment of the House Energy and Commerce Committee. Despite NIMH inaction, Dr. Goodwin wrote that some clinical and research activity had proceeded independent of NIMH. He cited *The Cultic Studies Journal*, published by the AFF, "which provides a forum for researchers," and the American Psychiatric Association's 1989 report, *Cults and New Religious Movements*. Dr. Goodwin believed, however, that serious questions remain "that are amenable to research for which the NIMH would be an appropriate focus." He concluded that questions regarding the state of research and the mental health implications of involvement in "totalistic" groups "remain as relevant today as they were in 1978." The Congressional inquiry to the NIMH stressed that the "inquiry concerns only conduct, in the nature of (or stimulating) physical or mental abuse, and not beliefs, religious or otherwise."

6. Letter April 21, 1994, from NIMH Director Goodwin to Washington counsel for AFF and CAN, David J. Bardin.

7. Lottick, "Survey Reveals Physicians' Experiences with Cults" *Pennsylvania Medicine* (February 1993), vol. 96, pp.26-28.

8. Hearings before the Committee on the Judiciary, U.S. House of Representatives, 103rd Cong., 1st Sess., Serial No. 95, "Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas" (U.S. Government Printing Office 1995), p. 123.

9. Hearings before the Committee on the Judiciary, U.S. House of Representatives, 103rd Cong., 1st Sess., Serial No. 95, "Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas" (U.S. Government Printing Office 1995), pp. 17 (opening statement), 32-33 (to Mr. Hughes: I am "doing everything I can to make sure we determine all available experts that can advise us in terms of how we address these problems in the future, what do we do now to address the cults that exist, what actions should be taken, if any."), 42 (to Mrs. Schroeder: I want to "see if we can perhaps develop a cadre of real experts who have information on how to deal with cults ... I don't want to be back here when somebody asks me, 'Don't you remember the lessons of Waco?')", 65 (to Mr. Reed: we may "have to develop a cadre of different types of applied human science"), 68-69 (to Mr. Becerra: "I want to ... try to talk to every expert we can").

Those hearings already indicate the Attorney General's awareness of relevant but unconsulted cult experts, as shown by the dialogue with respect to the AFF at page 32, referring to the article

cited in note 2 and including:

CONGRESSMAN HUGHES: "Did you ever talk to any of the folks from the American Family Foundation that has developed quite a bit of expertise or the Cult Awareness Network possibly during this time?"

....

ATTORNEY GENERAL RENO: "I have not talked to them."

10. *Recommendations of Experts for Improvements in Federal Law Enforcement After Waco* (released October 8, 1993): Mandate to the Experts.

11. To the contrary, one of the four, Professor Ammerman, confidently parroted the ignorant assertion of some sociologists of religion and academic cult apologists that "cult brainwashing ... is a thoroughly discredited concept" and laced the front page of her report with gratuitous slurs against CAN and the "anti-cult community." (See note 3.) A second, Professor Cancro, discussed "many groups such as the Branch Davidians which do not accept certain of our laws as valid or worthy of obedience" and said at the outset that these groups are "frequently mislabeled as cults". A third, Professor Sullivan, merely concentrated on recommending more attention to insights he believed students of religion could contribute to law enforcement. The fourth, Professor Stone, addressed some important issues (including questions outside his narrow mandate), but not cult behavior. As noted, none of these four scholars claim to have studied cult behavior issues.

For further information, contact: David J. Bardin, Washington counsel for AFF and CAN  
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## Attachment: CHILDREN OF JONESTOWN

Source: Cults in Our Midst: The Hidden Menace In Our Everyday Lives, by Margaret Thaler Singer. San Francisco: Jossey-Bass, 1995. All rights reserved.

Of the 912 members of the Peoples Temple cult who died, 276 were children. At the cult's jungle settlement in Guyana, the children lived in crowded physical conditions that resembled quarters on slave ships. Food was barely edible; medical care and clothing inadequate. Children were separated from parents and siblings and cared for by day care and nursery school teachers and house parents, who supervised the children in groups of about twelve.

Children were allowed to see their parents only briefly at night, so that they would place their allegiance instead with Jones and his wife and look upon them as father and mother. Children were rewarded for spying on their parents.

Those above the age of six had to do "public service" -- hard labor including working in the jungle fields and on construction crews from 7 a.m. to 6 p.m. in temperatures as high as 100 degrees Fahrenheit. Teenagers did over half of the heavy construction work at Jonestown.

As punishment, children were thrown into a dark well after being told that snakes awaited them there. They were kept in a plywood box measuring six feet by three feet by four feet for weeks at a time. They had teeth knocked out in public hearings, were forced to dig holes and then refill them, and were imprisoned in a small cellar. Jones often watched security guards beat children with switches, belts, and a long wooden board. Young girls were stripped and forced into cold showers or a swimming pool. Children had electrodes wired on their arms and were administered electric shocks. In one case, two six-year-olds who had tried to run away had chains and balls welded to their ankles.

Peoples Temple children were frequently sexually abused. While the group was still in California, teenage girls as young as fifteen had to provide sex for influential people courted by Jones. A supervisor of children at Jonestown had a history of child sexual abuse, and Jones himself assaulted some of the children. If husbands and wives were caught talking privately during a meeting, their daughters were forced to masturbate publicly or to have sex with someone the family didn't like before the entire Jonestown population, children as well as adults.

Jones gave children powerful mind-altering drugs. They were also subject to the terror of forty-two mass suicide rituals. Until the last one, the final White Night, they never knew if the ritual was a practice or the real thing. Jones had begun to plan the ending of the cult as a murder-suicide at least five years before it happened. In 1973, he told cult member Grace Stoen, "Everyone will die, except me, of course, I've got to stay back and explain why we did it, for our belief in integration." Jones told teenage member Linda Myrtle, "We're all to commit suicide, killing the children first, then ourselves." By late 1975, Jones began the White Night suicide drills in which members were given drinks and then were told they had been poisoned and would die in a few minutes. Guards were around and no one could leave. These drills began in San Francisco and continued in Guyana.

About 5 p.m. of the last day, Jones assembled everyone at the compound. The camp doctor and two nurses had filled hundreds of syringes with a cyanide-laced sweet drink -- yellow for infants, pink for children under ten, and purple for the older children and adults. Jones had audiotaped the last hours to memorialize them, and on the tape cult member Christine Miller can be heard protesting, "I look at all the babies, and I think they deserve to live ... I have the right to choose and I choose not to commit suicide."

I noted as did others who studied the tape that Jones turned it off, then on again, repeatedly. Soon Jones was yelling: "I want my babies first. Take my babies and children first. Get moving, get moving, get moving. Don't be afraid to die." The nurses reportedly took the syringes and squirted the cyanide down the throats of the babies. Stanley Clayton and Odell Rhodes, who hid and survived, provided accounts of the last minutes. Clayton reported that "the nurses plucked babies right out of their mothers' arms." The infants gave out piercing, tormented screams, and a nurse called out: "They're not crying from the pain. It's a little bitter-tasting. They're not crying out of any pain." Mothers poured cyanide-laced Fla-Vor-Aid down the throats of their infants and young children. On the final tape from Guyana, Jones's voice tells mothers, "Hurry, bring the little ones up here. Hurry, mothers, hurry."

The Jonestown settlement is gone, but the nightmare of cult life lingers on for many small children and teenagers caught in other cults.



Ms. JACKSON LEE. Mr. Chairman, I wonder because of the colloquy that we just had, the red light is on.

Mr. ZELIFF. You have 30 seconds left, regardless of what the red light says.

Ms. JACKSON LEE. Let me just ask Mr. Moulton, was there a coverup?

Mr. MOULTON. Absolutely not. Not by the Treasury Department in the preparation of that report; absolutely not.

Ms. JACKSON LEE. Let me ask Mr. Owen so my question can be out and you can answer the question, if you would go again to one of the weapons there that the gentlemen were kind to bring. I simply need you to point to a weapon that could be converted. Was there a weapon in that group that could have been converted or was a product of being converted?

Mr. OWEN. Yes. Yes, ma'am.

Ms. JACKSON LEE. Could you show me that quickly, sir, Mr. Owen. I thank you very much. And would you explain whether that was found in the compound.

I'm told you can't be heard. Maybe you need to use the microphone.

Mr. OWEN. This particular weapon has been converted. It's a semiautomatic, AKS-type rifle that's been modified. I believe this weapon was recovered from a vehicle located in front of the compound.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Mr. ZELIFF. The time is expired.

Thank you. I would just like to make a comment on behalf of our side as far as these weapons are concerned. We tried at great length to try to have access to those weapons and we received a letter dated July 11 from Mr. Kent Markus, Principal Deputy Assistant Attorney General, U.S. Department of Justice, saying comments that this will cost the taxpayers of the State of Texas and the United States many thousands of dollars.

We just would have enjoyed the opportunity to have worked with both sides here to examine those weapons as well. And I think it would have been helpful. I just make that statement.

I yield to the gentleman from Arizona.

Mr. SCHUMER. Would the chairman yield just for 1 minute?

As I understand it, a letter was sent offering—that same letter offering your ability to examine the weapons. The problem was, as I understand it, twofold.

One, of course, Failure Analysis, whatever their last initial is, but which is in great dispute now; but second, they just didn't want to break the chain of—I forget what the legal term is—custody, because these weapons still are part of a legal process ongoing.

Mr. ZELIFF. Just because of the interest in terms of getting at the evidence, could I ask the question of how much did it cost to just bring those weapons up? Because it would have been helpful for our side, as well. Anybody have any idea? Just a ballpark figure.

Mr. MICA. Mr. Chairman, just a question.

Wouldn't it be possible to—these weapons are now here, and I just heard some conflicting things.

First, I heard that this was recovered in the compound and then the gentleman just testified that the weapon he held up was in a

vehicle in front of the compound and then the other witness sort of—and I'm not a weapons expert, I've never even held one of those weapons. Isn't it possible now to turn those over temporarily to the committee and have someone independently look at them?

Mr. ZELIFF. I think if I could make a comment, exercising the prerogative of the Chair, I think what we tried to do is to get a third party, or at least get the Justice Department, to x-ray these weapons, make information available to all of us to determine which weapons were altered and because you have a serious heat problem in a fire, certain materials do get melted down.

And so what we were looking for is to bring in an expert on a third-party basis to look at it or at least get all of us involved in the process, so we could examine the evidence because I think it's an important piece of evidence to consider.

Mr. TAYLOR. Mr. Chairman, for a very brief—

Mr. ZELIFF. And the problem is that Justice writes back, because the process required will be expensive, cumbersome, and difficult, and of little or no evidentiary value to the public whom we both serve. We recommend against the procedure which you have requested and besides that, it would cost the taxpayers the State of the Texas and the United States many thousands of dollars.

Mr. TAYLOR. Mr. Chairman, for a point of clarification, Mr. Owen said the weapon had been modified. Modified to do what?

Mr. OWEN. Machinegun.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. ZELIFF. Modified by whom?

Mr. OWEN. I have no idea.

Mr. ZELIFF. I guess we don't either.

Mr. MICA. Mr. Chairman, again which weapon are they referring to? One is charred. The other weapon he said was found in a vehicle in front of the compound.

Again, we have these weapons here and I see no reason why we can't have an independent, responsible authority look at the weapons and make a determination for the benefit of the two subcommittees.

Mr. SCHUMER. Would the gentleman yield?

Mr. ZELIFF. I think at this point we need to move on to the next—

Mr. SCHUMER. I guess there are a couple of points unanswered here.

No. 1, they were found, as I heard Mr. Owen say, in a vehicle in front of the building which is part of the compound. The compound is not just the building, but it's the surrounding area. It was, indeed, on the compound. If you read any of the literature, that's what the compound is referred to.

Second, to hand over the weapons, whether it be to this committee or to a third group, the majority asked that Failure Analysis, paid for by the NRA, hardly an impartial source, do it, a ridiculous suggestion—

Mr. ZELIFF. How about the Department of Justice?

Mr. SCHUMER. To hand it over to any, any third party would break the chain of custody and ruin the cases. Now, if you want to try to sit down and work something out, that's fine.

Finally, the letter that you requested didn't request two weapons, but requested all the weapons be flown up here and done. That is much more expensive than a few.

Mr. ZELIFF. Now that we know it can be done, maybe that's an issue for another day.

The Chair now recognizes the gentleman from Arizona, Mr. Shadegg.

Ms. JACKSON LEE. Mr. Chairman, the point of your discussion came out of my questioning and I would just like the clarification and I will say it to you, I think Mr. Owen may not have completed his answer to the extent that the question was calling for him to answer whether there were devices on the property, on the compound or inside the facilities that could modify to a fully automatic. I assume he didn't complete his answer on that, that there were device modification equipment to modify a fully automatic on the premises; is that my understanding?

Mr. OWEN. I cannot testify to that; ma'am.

Ms. JACKSON LEE. You are not familiar with that?

Mr. OWEN. No, ma'am.

Mr. ZELIFF. The Chair would now like to recognize Mr. Shadegg from Arizona for 5 minutes.

Mr. SHADEGG. Thank you very much.

Let me resume where I was. I spent a good deal of my career defending law enforcement. I come to these hearings with mixed emotions. I'm not here to assess blame or to appoint guilt. My goal isn't political.

It is not to point at the administration, but there is an important goal that goes on here today. First of all, I am pleased to see my colleagues the other side defending law enforcement, because I find historically they don't do that.

But I think——

Mr. SCHUMER. Mr. Chairman, I object to that statement.

Mr. SHADEGG. I think it's important——

Mr. SCHUMER. That is——

Mr. SHADEGG. I think it is important——

Mr. SCHUMER. I object to that statement here.

Mr. ZELIFF. Let the gentleman proceed——

Mr. LANTOS. It is a preposterous statement, Mr. Chairman. It is an insult to this body.

Mr. ZELIFF. I know the evening is getting late. You probably didn't hear it, he's trying to compliment you.

I think that's the way he intended it. Let's move forward. Mr. Shadegg.

Mr. LANTOS. That's not a funny remark, Mr. Chairman. That's an arrogant denunciation of those of us on this side of the aisle.

Mr. SCHIFF. Point of order.

Mr. ZELIFF. The committee will come to order.

Mr. LANTOS. I believe that we are owed an apology.

Mr. ZELIFF. Mr. Shadegg, please proceed.

Mr. SHADEGG. Thank you, Mr. Chairman.

It seems to me the goal of these hearings is try to enable the American people to have faith in law enforcement at the Federal level once again. Regrettably, this particular incident has eaten away at their faith in law enforcement.

It seems we can achieve that goal by doing one of two things. One, ascertaining what mistakes were made, if any. Two, ascertaining whether or not corrective measures have already been taken to correct those mistakes.

I think we spent the day focusing on all kinds of issues that are not issues. For example, whether or not Mr. Koresh was a gross, base human being who had no business being in the position he was in and no business being able to access children as he did, that is not, I don't believe, the issue here.

But I would like to get to some of issues that I think are important for the American people because it's my goal to rehabilitate their faith in law enforcement, because if they have no faith in law enforcement, we don't have an ordered society.

Let me in that regard begin with you, Mr. Aguilera. First, as I understand your testimony it is that you were offered by Mr. Koresh, and you understood you had been offered by Mr. Koresh, an opportunity to come and look at the weapons that he had in his—weapons or parts of weapons that he had in his possession?

Mr. AGUILERA. Mr. McMahon had telephonically contacted Koresh and he asked me to come to the phone.

Mr. SHADEGG. I've got very little time. Did you understand, and I think and believe you said you did. Did you understand that you were being offered an opportunity to go look at those weapons?

Mr. AGUILERA. Yes, sir.

Mr. SHADEGG. OK. Now, I would understand why as a law enforcement officer you would not want to take that up at that particular moment in time. My question of you is did you later take that offer up?

Mr. AGUILERA. No, sir.

Mr. SHADEGG. Did you ever take that offer up?

Mr. AGUILERA. No, sir.

Mr. SHADEGG. Did you tell your supervisor, specifically Mr. Sarabyn, that you had been offered to go into the compound at Mr. Koresh's invitation and to look at the weapons?

Mr. AGUILERA. Yes, sir. It's been in my reports.

Mr. SHADEGG. You told Mr. Sarabyn that?

Mr. AGUILERA. Whether he read the reports or not, I don't know, but they were in my reports.

Mr. SHADEGG. Mr. Sarabyn, were you aware when you planned the dynamic raid that one of your agents had been offered an opportunity to go in and look at the weapons and see what was there?

Mr. SARABYN. Yes, I was, sir.

Mr. SHADEGG. Mr. Aguilera never went. Did some other agent from ATF go?

Mr. SARABYN. No, sir.

Mr. AGUILERA. No.

Mr. SHADEGG. I think, Mr. Sarabyn, you went?

Mr. SARABYN. No.

Mr. SHADEGG. Is there some reason why no one—

Mr. SARABYN. We discussed it, as I said, when we had this committee of the people planning this raid, that was one of our options to consider why don't we try to call the dealer and, you know, then see if we can get Koresh off that way.

But from all the intelligence we were getting at that time when we started this investigation, everything we were told, there was armed guards and at one time there was, there was a guardhouse or whatever. But things had changed from the information that we were getting back from people still in the compound, that he was now paranoid of his people, that the guns were put up. We didn't want to alert him by, you know, going a second time, talking about guns and then he might put the armed guards up and go back to the way he was before.

Mr. SHADEGG. I'm absolutely baffled that when he had this standing offer for you to be able to go and look at these weapons, you chose never to call him back and take that offer up and find out what was in there. And why you would not do that and still plan a dynamic raid is beyond me.

I guess I'm trying to understand why the dynamic raid was necessary when he had a standing offer that you could come in and look at those weapons.

Mr. SARABYN. Like I said, the panel considered this. We talked about it. We just thought it would put him on an offensive mood and go back to having armed guards.

Mr. SHADEGG. Do you now wish you had gone back in and at least taken a look at the weapons and tried to take him up on his offer?

Mr. SARABYN. We could have, yes.

Mr. SHADEGG. I'm a little puzzled about the whole timing and sequence of the actual entry itself. I understand, Mr. Sarabyn, you were in charge of the actual raid the day it occurred; is that right?

Mr. SARABYN. My title was the tactical coordinator. I was the head of the SRT teams.

Mr. SHADEGG. I was puzzled earlier and I understood that you did not know and couldn't answer Mr. Brewster's questions about how many agents went to the door. Tell me that isn't true. I assume you knew how many agents went to the door.

Mr. SARABYN. I don't know the specific number that went to the door. It was broken into six different teams. And we had several teams making entry in the front door, three teams that were going around, but I mean, I could find some list and give you the specific number, but I do not know it off the top of my head.

Mr. SHADEGG. But you had overall supervisory authority for the entire raid that day?

Mr. SARABYN. I was the tactical coordinator and each member under me was responsible for his own team.

Mr. SHADEGG. OK.

Mr. SARABYN. Those were the teams that would be making entry.

Mr. SHADEGG. Can you give the American people any definitive answer on the question of whether or not agents fired from the helicopters and whether or not they fired before or after people from the compound fired themselves?

Mr. AGUILERA. I was in one of the helicopters. No, nobody shot from the helicopters to the compound.

Mr. SHADEGG. You were in one of the helicopters. I guess I was asking Mr. Sarabyn, because he was in charge of the whole raid, what can we tell the American people on the issue of whether or not armed Federal agents fired first or didn't fire first?

Mr. AGUILERA. We didn't fire first. According to the testimony during the trial, when they were getting out of the cattle carts, they fired upon us.

Mr. SHADEGG. I'm a little—I appreciate that. I still was asking Mr. Sarabyn, because he was in charge of the raid. And I guess if he didn't know how many agents were at the door, I'm troubled with how he now knows whether or not we fired first.

Mr. SARABYN. I was in the first vehicle pulling up on the compound. We had two vehicles. We don't have a picture right now.

We went down a 250-yard driveway and we made a left-hand turn. I was in the first vehicle and I went in front of the compound and actually stopped at the end of the compound. The second vehicle stopped at the front door.

Before I opened my door to get out, we were being fired on from the compound. So I was going to the front door but I never got but a few feet from when they began to fire at us. So that's why consequently I do not know what happened at front door. We didn't fire first.

Mr. ZELIFF. The gentleman's time is expired.

Mr. SHADEGG. If I could have one followup question. With regard to this issue of child molestation which has been a major issue today and I think a major distraction, did you ever contact the Texas law enforcement authorities who would have had jurisdiction over that? You clearly did not.

Did you ever contact Texas law enforcement authorities who would have had jurisdiction over child molestation or statutory rape and invite them to participate in the raid?

Mr. AGUILERA. No, sir. I didn't invite them to participate in the raid. However, I did have conversations with the district attorney there to pursue the State charges on child molestation.

Mr. SHADEGG. And were they invited to be involved at all other than—

Mr. AGUILERA. No, sir.

Mr. ZELIFF. The gentleman's time is expired.

Thank you.

I'm going to do my 5 minutes and then we're going to have to recess for a vote and come back. Believe it or not, we do this every once in a while. It just happens to coincide with the hearing. So thank you for your patience.

I passed out or I would like the clerk to pass out document No. 3. In my questions, I will start with Mr. Hartnett.

Document No. 3 says the raid was approved by the Bureau headquarters on or between 2-11-93 or so. I know that special agents in charge Sarabyn and Aguilera met with high-ranking Bureau officials prior to the raid.

Were you one of those officials?

Mr. HARTNETT. Yes, sir; I was.

Mr. ZELIFF. You were. And the raid was approved in Washington by high-ranking Bureau officials on or near February 11, 1993.

Did you approve that on or near that date?

Mr. HARTNETT. Yes, sir; I did.

Mr. ZELIFF. You did. And did you know whether or not when it was approved it was said to halt the raid if the element of surprise was lost?

Mr. HARTNETT. I never heard the term "element of surprise," no. Let me say surprise was a part of the plan, but nothing was ever said about the other.

Mr. ZELIFF. OK. The document also says several pages of surveillance log had been torn out. Have you ever heard that before?

Mr. HARTNETT. No, sir; I hadn't.

Mr. ZELIFF. Who is responsible for safekeeping of the surveillance log?

Mr. HARTNETT. Littleton, I believe, was the supervisor at the surveillance house. I just never heard that before.

Mr. ZELIFF. But pages were removed or missing.

Mr. HARTNETT. No, I never heard that before, that pages were removed.

Mr. ZELIFF. OK. Well, you might want to refer to that document No. 3 that we handed you.

Mr. SCHUMER. Parliamentary inquiry, Mr. Chairman. We have a copy of the document. We don't know what it is. It just has a lot of writing on it. Is it a note from who to who?

Mr. ZELIFF. OK. This is part of the 13,000 pieces of loose paper the Treasury gave us that was unorganized and we are trying to piece it together, but we think it is pertinent. It certainly involves—

Mr. SCHUMER. Do you know who wrote it?

Mr. ZELIFF. It refers to Mr. Higgins. It refers to—I think it is very pertinent.

Mr. SCHUMER. But I just want—I'm not trying to be obstreperous. I just want to know who wrote it. We don't know.

Mr. ZELIFF. It is the postraid interview with one of their agents. I am asking the gentleman that was in charge if he could shed some light. It has markings on the left-hand side, agent John Bryant, Dallas, is about all we can figure out. We have the same concerns you do.

Where were we? Mr. Hartnett, were you about ready to answer?

Mr. HARTNETT. I'm sorry, sir, I just—you mentioned that notes were torn out of the surveillance log.

Mr. ZELIFF. I was just wondering how does that happen?

Mr. HARTNETT. I don't know, sir. I had never heard that before. I don't recall ever hearing it before.

Mr. ZELIFF. Do you know if it was true?

Mr. HARTNETT. No, sir, I don't.

Mr. ZELIFF. OK. So this may or may not apply then. The interview with the unnamed agent also says, "personal knowledge that the surveillance notes for the ATF were poor and incomplete."

Do you have any reason to believe that the agent being interviewed is not telling the truth?

Mr. SCHUMER. Mr. Chairman, how can he answer the question when he didn't know who the witness is, the writer is?

Mr. ZELIFF. Why don't you let him answer it. I know you're good, but—

Mr. SCHUMER. So is he.

Mr. HARTNETT. I don't think I understand what you're asking, I guess.

Mr. ZELIFF. I guess you know that this is an interview with one of your agents and I am just trying to get out the fact that if these

logs get changed or tampered with or pages get pulled out, I am just wondering if you know anything about that.

Mr. HARTNETT. No, sir; I don't.

Mr. ZELIFF. Halfway down the ATF's agents' interviews documents says, "Statements that the ATF was outgunned were true. Mr. Hartnett had prior to the raid mandated that we all turn in our AR-15's, even though several RACs voiced their complaints."

Mr. Hartnett, is that true? Did you mandate that the agents turn in their AR-15's? And what is an AR-15? Were these agents knowingly outgunned before they started? Why did you have them turn in their AR-15's?

Mr. HARTNETT. We were in the midst—first of all, they had all the AR-15s that they wanted in their raid plan. I think the number, as I recall and I could be wrong, was eight.

But what was taking place at the same time was that we were converting from the AR-15 to a 9-millimeter weapon. The reason we were doing that is that the AR-15 fires a 223 round and 90 percent of our work are in the cities and that round would go through one house and through another and just keep on going.

When these weapons came out, I made a decision after tactical support and everybody tested these weapons that the 9-millimeter was a much better weapon to use. But in Waco they came in to us and said we want eight—at least the number was eight—AR-15's. They were all issued to them. But there's still a lot—we put some AR-15's back in the field because of places like Texas that felt they still needed long-range rifles, but for the most part we were removing them from the field. But we weren't outgunned at Waco, that's for sure.

Mr. ZELIFF. OK. Mr. Sarabyn, document 3 says the raid was approved by the Bureau headquarters on or between 2-11-93 or so. special agent in charge met with high-ranking Bureau officials prior to the raid.

Is that true?

Mr. SARABYN. Yes. There was a briefing on the 11th and 12th of February and we were there. And it was Mr. Hartnett and Mr. Conroy and the executive staff, and then I think the following day you met with Mr. Chojnacki and that's when they approved the raid on the 12th, actually, I believe.

Mr. ZELIFF. Thank you very much. My time is expired. We will now recess for 15 minutes.

[Recess.]

Mr. ZELIFF. The hearings will reconvene. The committees will come to order.

Again, I thank the patience of the witnesses and the patience of those members that are still here. This is a pretty good crowd for this time of night, I think, since we started at 10 o'clock this morning.

The Chair yields to our good friend, Mr. Conyers of Michigan, for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

On the question of staleness in the warrant, I would like to turn to Mr. Johnston. You are aware of the argument against a warrant application being stale. Can you make any comments about it in reference to the instant case?



Mr. JOHNSTON. I can. And let me say before I make the comments, I don't claim to be a law school professor. I'm not. Jeff Moulton is. But we have former U.S. attorneys here. Their judgment on this and experience may well be better than mine.

However, in the—toward that, in the fall of 1992, I wondered about staleness. I felt like it was OK. In other words, the time period. But I wondered about it. And I did some research at the time, I have some of the cases here. Because in firearms cases, staleness is treated a little differently. And I'll just—

Mr. CONYERS. Could I warn Mr. Moulton that I may ask him to share this question, after Mr. Johnston responds.

Mr. MOULTON. Thank you.

Mr. JOHNSTON. And I found, and I'll just refer to what I found that gave me a feeling that we were OK on it.

Mr. CONYERS. Please do.

Mr. JOHNSTON. *U.S. v. Bachelor*, a 9-month interval was not too stale in a silencer case. *U.S. v. McCall*, a 7-month interval, in a revolver case. *U.S. v. Brinklow*, an 11-month interval in a firearms case. *U.S. v. Rahn*, R-A-H-N, there was a 2-year interval. That seemed extreme, but there was a 2-year interval between the facts that occurred, the alleged activity, and the search warrant affidavit. And 1-year interval in *U.S. v. Simms*, and a 13-month interval in *U.S. v. Marriott*.

Now, obviously, you don't want to put yourself in a position to having an arguably stale affidavit. But after the research, I felt like we were OK with it, sir.

Mr. CONYERS. Yes, thank you.

Mr. Moulton, could you make additional comments about the staleness argument against the warrant application?

Mr. MOULTON. Certainly, Congressman.

I think courts, when they're evaluating claims of staleness, as Mr. Johnston suggested, look at a couple of different factors. There's no mechanical test in terms of number of months or days or weeks that renders information stale.

Two of the things they look at are the nature of the criminal activity, is it an isolated event like a bank robbery and the cash from that bank robbery, or is it an ongoing pattern of criminal activity?

The other things they look at is the type of evidence, is it evidence that's likely to be anticipated or taken somewhere else quickly, again like cash.

Mr. CONYERS. Like drugs or cash?

Mr. MOULTON. Like drugs or cash, or is it something that has more permanence to it, it's likely to remain.

And I think Mr. Johnston accurately suggested that here we've got a type of evidence, a firearm, that's not ordinarily disposed of quickly. Clearly, Koresh over a substantial period of time expressed his interest in possessing automatic weapons. And again, the criminal activity here continued over a substantial period of time.

I think that most courts, if not all courts, would conclude here that the information in the warrant was not stale. I want to remind you as well, or point out, that the warrant did include information in the late fall, early winter, about hearing bursts of gunfire at the compound. So it's not the case that all the information was 8 months old or so.

Mr. CONYERS. Of course. You are familiar with the fifth circuit case of *Batista v. Henderson* on staleness?

Mr. MOULTON. I'm not—I may have read that case. It doesn't mean anything to me.

Mr. CONYERS. Well, it goes along with the same direction that we were moving in.

Mr. Sarabyn, isn't it correct that the document that was introduced by Chairman Zeliff before the break, that was unidentified, is now identified as to be one of a Mr. Larry Sparks?

Mr. SARABYN. Yes.

Mr. CONYERS. Yes. Do you have it in your hand?

Mr. SARABYN. Someone just told me that when I came back to my seat, that it was a document from Mr. Larry Sparks.

Mr. CONYERS. Well——

Mr. SARABYN. Yes.

Mr. ZELIFF. Who said it was? Who established the identity?

Mr. CONYERS. Well, let me—let me continue the questioning. Thank you very much, Mr. Chairman. How has this been established as belonging to Mr. Sparks?

Mr. SARABYN. That, I don't know. I just walked up to the table. Several people said this came from Mr. Sparks.

Mr. CONYERS. You're not sure.

Mr. BARR. Mr. Chairman, I can't hear the witness.

Mr. CONYERS. Pull your mike up a little closer, sir.

Mr. SARABYN. I just came back to the table and several people standing here just said this came from Larry Sparks.

Mr. CONYERS. OK. We will come back to it. I have got two colleagues that would like a little time. Mr. Green, the gentleman from Texas, I will yield to you.

Mr. GREEN. Thank you, Mr. Chairman.

Let me ask first, Mr. Moulton, one of the allegations about this hearing is that who asked for the investigation that was made. Do you know who asked for this report to be made?

Mr. MOULTON. Yes, yes, Congressman, I do. It was the President of the United States who asked the report be—the investigation be conducted.

Mr. GREEN. OK. So, you know, even though we are 2 years late, this—the President asked for this report much earlier, right after the incident?

Mr. MOULTON. He asked for the report I believe on April 19, 1993.

Mr. GREEN. OK.

Mr. Owen, let me, since you brought out the AK-47 with the folding stock, let me ask you a little bit about some of the weapons. And again, looking at this report, in the charred remains we see the grenade casings and also a picture of it looks like a warehouse or that bus that was—that was used as a bunker. In the findings, did you find any AR-15's or AK's that had been converted?

Mr. OWEN. Yes, sir.

Mr. GREEN. OK. How many? Because under earlier testimony from the gun dealer, he had sold at least 200 weapons to Mr. Koresh, and no telling how many more he could have bought at gun shows on his own. But do you have any idea from the inventory?

Mr. OWEN. From a very preliminary examination, as the weapons were brought to the evidence collection point, I identified 50 probable machineguns.

Mr. GREEN. OK. When you say "probable machineguns," again, you know, it is not illegal for me to own 200 AK's that are semi-automatic.

Mr. OWEN. That's correct.

Mr. GREEN. But it is illegal if I own them and they have been converted or they are automatics or machineguns.

Mr. OWEN. That's correct.

Mr. GREEN. OK. So you feel pretty confident there were 50 automatic weapons that were found in the charred remains at Mount Carmel?

Mr. OWEN. Yes, sir.

Mr. GREEN. OK.

What about the grenade casings? Did you see any of them that had any filament in them or anything that, you know—because we also heard testimony that not only were there cases of casings, but there was also ingredients to be able to stuff them.

Did you find, did anyone find any in there?

Mr. OWEN. Congressman, I cannot speak to the handgrenades.

Mr. GREEN. OK.

Mr. ZELIFF. The gentleman's time is up.

Mr. GREEN. Anyone on the panel who did any investigation can speak, with personal knowledge? Because I guess I don't like to hear—I guess I have heard hearsay so much today that it would be nice to have personal knowledge.

Mr. JOHNSTON. I believe the FBI did the work on the handgrenades, and you have to ask them.

Mr. GREEN. We will have them here. Let me——

Mr. ZELIFF. The gentleman's time is up.

Mr. GREEN. OK. Thank you, Mr. Chairman. Thank you, Mr. Conyers, for yielding time.

Mr. ZELIFF. OK. The Chair now recognizes Mr. McCollum.

Mr. MCCOLLUM. Thank you very much.

I just want to clarify a few things with you in the brief time I have got this evening, gentlemen. Mr. Sarabyn, who is Larry Sparks?

Mr. SARABYN. He was the previous supervisor in Austin, TX.

Mr. MCCOLLUM. At any time did you have a conversation with Mr. Sparks, or anyone else, where you said to them that you believe that several of the items mentioned in the arrest and search warrants involved in this case were not true?

Mr. SARABYN. Never.

Mr. MCCOLLUM. That has been reported in some conversations that we see in the record of Mr. Sparks. Are you aware he has made such a statement?

Mr. SARABYN. I don't know if Mr. Sparks——

Mr. MCCOLLUM. Not necessarily on that piece of paper. I am not referring to that piece of paper.

Mr. SARABYN. What was your question, sir?

Mr. MCCOLLUM. I am just asking if you are aware Mr. Sparks may have made such a statement at any time?

Mr. SARABYN. No.

Mr. MCCOLLUM. All right. Fair enough.

Mr. Aguilera, I don't have you back as a witness on another day. In order to avoid bringing you back, I want to ask you a couple more questions about the raid day itself, even though that is not the primary topic here. You were in a helicopter that day, as I understand it; correct?

Mr. AGUILERA. Yes, sir, I was.

Mr. MCCOLLUM. You had guns on that helicopter; is that correct?

Mr. AGUILERA. Yes, sir, I did.

Mr. MCCOLLUM. Were those guns ordered to be downloaded?

Mr. AGUILERA. I had a gun. I had——

Mr. MCCOLLUM. You had a gun. Well, was there only one gun on that helicopter?

Mr. AGUILERA. I don't know if anyone else had one. I know I had my pistol with me.

Mr. MCCOLLUM. How about any rifles?

Mr. AGUILERA. No, sir, I didn't——

Mr. MCCOLLUM. Were there any rifles on that helicopter?

Mr. AGUILERA. No, sir, not that I—not that I——

Mr. MCCOLLUM. Were you aware whether there were any rifles on any of the other—there were two other helicopters; were there not?

Mr. AGUILERA. Yes, sir, but I don't know if there was——

Mr. MCCOLLUM. You don't know whether there were or not?

Mr. AGUILERA. No, sir.

Mr. MCCOLLUM. Were you ordered to have your gun downloaded?

Mr. AGUILERA. No, sir, I had mine——

Mr. MCCOLLUM. You had it loaded?

Mr. AGUILERA [continuing]. Loaded, yes, sir.

Mr. MCCOLLUM. All right. Do you know if there were any shots fired from your helicopter that day?

Mr. AGUILERA. There were no shots fired.

Mr. MCCOLLUM. Do you know whether there were shots fired from either of the other helicopters? Do you have personal knowledge?

Mr. AGUILERA. No, I testified to that.

Mr. MCCOLLUM. All right. Isn't it true that you and your helicopter took fire?

Mr. AGUILERA. That's correct.

Mr. MCCOLLUM. Could you have fired back because under the rules of engagement as you knew it that day? I am not asking you whether you did, but I am asking you whether you could have.

Mr. AGUILERA. Could I have fired?

Mr. MCCOLLUM. Yes, sir.

Mr. AGUILERA. Not from the position I was in.

Mr. MCCOLLUM. But you would have been permitted to have fired back, is what I am getting at, not whether you physically thought you could. But under the rules of engagement that day, when you were fired upon, could you not have then fired back?

Mr. AGUILERA. Yes, sir, if I was being fired at, yes, sir.

Mr. MCCOLLUM. And you were being fired at at some point——

Mr. AGUILERA. Yes, sir.

Mr. MCCOLLUM [continuing]. Were you not?

Mr. AGUILERA. Yes, sir.

Mr. MCCOLLUM. All right. Thank you.

I have got to clarify one other thing here. Mr. Hartnett, Mr. Moulton earlier this evening said, as I recall, to a response of a question of Ms. Jackson Lee, if I am not mistaken, that there was no coverup involved in this matter by the Treasury Department at all. Do you agree with that comment?

Mr. HARTNETT. No, I don't.

Mr. MCCOLLUM. Why?

Mr. HARTNETT. I feel that the Treasury Department has said things since the time of the raid about Waco that have been incorrect. I feel that the Treasury report, where it says some very good things that should be done, things that we could correct in law enforcement, I think it also had many omissions, distortions, and false statements in it.

Mr. MCCOLLUM. And why do you believe those omissions and false statements are in that report?

Mr. HARTNETT. I believe that they were concerned about the fallout from the media, that they couldn't just say that management at the scene there was—made mistakes. But that wasn't the tone of the report. They felt like they had to write a scathing report, which made a lot of people suffer, like Chuck and some of those other people down there, that were just doing their job, and it was I think very biased and unfairly written.

Mr. MCCOLLUM. And you think that was a coverup of sorts for what?

Mr. HARTNETT. I think they felt like, and I don't know if coverup is a term that I would use, I would say that they felt like they had to at least when it came to the press show that they were taking some very strong action and they weren't responsible for anything and these managers down there had done this intentionally, and that just was not the case.

Mr. MCCOLLUM. And you said earlier that the element of surprise was—the first time you ever heard of it was when that—after the day of the raid?

Mr. HARTNETT. That's correct.

Mr. MCCOLLUM. Is that part of your concern?

Mr. HARTNETT. Certainly it is. Because I think that the media picked up on it and, you know, I would have to say that I used it, too. We all started using it after the raid and it was a foolish thing to do. I sort of got trapped by the media, trapped myself. But it throws a whole different perspective on what those commanders did down there.

And I just—I think it's 3 weeks ago, I saw the Assistant Secretary Noble on a national broadcast say that Treasury and ATF had ordered those commanders not to go forward if they lost the element of surprise. And I am the only person who was given principally direct orders to those commanders. And I never gave such an order and I never received such an order.

And we did talk about safety. I mean, we must have talked about safety a hundred times. And the director called me the night before the raid, said, be sure to mention it again to them. If anything isn't right, you see guns, anything, shut it down. Yes, we did talk about that constantly. But the term "element of surprise," I never heard

it until the media started using it, our own public affairs after the raid.

Mr. MCCOLLUM. Thank you very much. We will undoubtedly pursue questioning along these lines further as the hearings progress. Thank you, Mr. Hartnett.

Mr. AGUILERA. Sir, if I may interject. I attended a meeting with Mr. Higgins, Mr. Hartnett, Chuck Sarabyn, and I was asked the same question. And I told them that I didn't recall quite clearly, but I do believe that the element of surprise was asked by Mr. Higgins. If the element of surprise was going to be lost, don't continue on this, on the raid.

Mr. MCCOLLUM. When was that?

Mr. AGUILERA. As far as I—

Mr. MCCOLLUM. When was this meeting that you attended, Mr. Aguilera?

Mr. AGUILERA. This was the meeting that I went up to headquarters with Chuck Sarabyn—

Mr. MCCOLLUM. When?

Mr. AGUILERA [continuing]. And Mr. Chojnacki.

Mr. MCCOLLUM. When? What time? What date?

Mr. AGUILERA. I believe—I don't recall. I don't have my notes with me.

Mr. MCCOLLUM. Before, was it before—

Mr. AGUILERA. It was prior to the raid.

Mr. MCCOLLUM. How long before, roughly?

Mr. AGUILERA. I would say maybe two to three weeks.

Mr. MCCOLLUM. All right. We will have to come back and revisit this with you. Thank you very much.

Mr. ZELIFF. Mr. Aguilera, Mr. Jahn testified that all rifle or all gun chambers were to be emptied by the ATF and—

Mr. SCHUMER. Will the gentleman yield?

Mr. ZELIFF. This is a pertinent question.

And you indicated that your weapon was loaded?

Mr. SCHUMER. Are we going to get a pertinent question?

Mr. ZELIFF. Did you miss—did you violate any rules by that?

Mr. AGUILERA. I didn't violate any rules. I never heard of that until today.

Mr. ZELIFF. Thank you very much.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. Chairman, I appreciate your kindness since Mr. McCollum brought up my questioning, and I just needed to know whether Mr. Hartnett intended to make a blatant statement that this was a coverup by the Treasury Department. There may have been some misstatements, and we are here to correct and to improve, but are you saying that this was a blatant 5-month report that covered up all of the wrongs that might have occurred?

Mr. HARTNETT. No, I'm not saying that, ma'am.

Ms. JACKSON LEE. Thank you, sir.

Mr. ZELIFF. Thank you very much. It has been a long day.

Mr. TAYLOR. Mr. Chairman?

Mr. ZELIFF. We appreciate—

Mr. SCHUMER. Can we get a pertinent question?

Mr. ZELIFF. I think you just got one. Let's not start another 2-hour siege here.

Mr. TAYLOR. Mr. Chairman.

Mr. ZELIFF. I am going to conclude the hearings. I would like to thank you all, the witnesses——

Mr. BARR. Technical request, Mr. Chairman.

Mr. ZELIFF [continuing]. Very much for your testimony. We will adjourn. Meeting stands adjourned to 9:30——

Mr. BARR. I just have a technical request, Mr. Chairman. I would like a unanimous consent that the documents that I distributed to Mr. Johnston earlier be included in the record.

Mr. ZELIFF. Without objection, so ordered.

Mr. TAYLOR. Mr. Chairman, for another unanimous consent.

Mr. ZELIFF. Go ahead.

Mr. TAYLOR. Mr. Chairman, I would like to ask unanimous consent that Mr. Hartnett be required to come before this committee again and explain the extent of the coverup.

Mr. ZELIFF. He will be there. If you look at your scheduled witnesses, he is scheduled. Thank you very much. Meeting adjourned.

[Whereupon, at 10:35 p.m., the subcommittees adjourned.]





# ACTIVITIES OF FEDERAL LAW ENFORCEMENT AGENCIES TOWARD THE BRANCH DAVIDIANS

## (Part 1)

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THURSDAY, JULY 20, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CRIME,  
COMMITTEE ON THE JUDICIARY, JOINTLY WITH THE  
SUBCOMMITTEE ON NATIONAL SECURITY, INTER-  
NATIONAL AFFAIRS, AND CRIMINAL JUSTICE, COMMIT-  
TEE ON GOVERNMENT REFORM AND OVERSIGHT,

*Washington, DC.*

The subcommittees met, pursuant to notice, at 10:10 a.m., Hon. Bill McCollum (chairman of the Subcommittee on Crime) presiding and Hon. William H. Zeliff, Jr. (chairman of the Subcommittee on National Security, International Affairs, and Criminal Justice).

Present from the Subcommittee on Crime: Representatives Bill McCollum, Steven Schiff, Howard Coble, Stephen E. Buyer, Steve Chabot, Bob Barr, Fred Heineman, Ed Bryant of Tennessee, Charles E. Schumer, Robert C. Scott, Zoe Lofgren, Melvin L. Watt, and Sheila Jackson Lee.

Also present from the Committee on the Judiciary: Representatives Henry J. Hyde and John Conyers, Jr.

Also present: Representative Chet Edwards.

Present from the Subcommittee on National Security, International Affairs, and Criminal Justice: Representatives William H. Zeliff, Jr., Steven Schiff, Ileana Ros-Lehtinen, John B. Shadegg, Peter Blute, John L. Mica, Robert L. Ehrlich, Mark E. Souder, Karen L. Thurman, Tom Lantos, Robert E. Wise, Jr., Gary A. Condit, Louise McIntosh Slaughter, Gene Taylor, and Bill K. Brewster.

Also present from the Committee on Government Reform and Oversight: Representatives William F. Clinger, Jr., Cardiss Collins of Illinois, and Gene Green.

Staff present from the Subcommittee on Crime: Paul J. McNulty, chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, assistant counsel; and Audray L. Clement, clerk; Committee on the Judiciary: Alan F. Coffey, Jr., general counsel/staff director; Dan Freeman, parliamentarian; Julian Epstein, minority staff director; Perry Apfelbaum, minority general counsel; Melanie Sloan, minority counsel; and Tom Diaz, minority counsel.

Staff present from the Subcommittee on National Security, International Affairs, and Criminal Justice: Robert Charles, staff director and chief counsel; L. Stephan Vincze, defense counsel; Michele

Lang, special counsel; T. March Bell, counsel for justice affairs; and Sean Littlefield, special assistant and clerk; Robert Shea, special assistant; Committee on Government Reform and Oversight: Kevin Sabo, general counsel; Judith McCoy, chief clerk; and Jeffrey Wilmot, professional staff member.

Mr. MCCOLLUM. The hearing will come to order. This is the second day of the joint hearings between the two subcommittees of Reform and Oversight and Judiciary. Today, I have the opportunity and the pleasure to host this hearing in the Judiciary Committee hearing room. Tomorrow, the cochairman, Bill Zeliff, will host the hearings in his setting and from now on, for the remainder of the 7 days or so that we are doing these hearings, there will be the alternative back and forth.

To lay the ground rules for today, there will be four opening statements permitted of 5 minutes each in length by the two Chairs and the two ranking minority members of the subcommittees. We are not going any further with those and they will be very brief and to the point.

I am only going to make a couple of minutes of opening statements and yield for about 2 or 3 minutes to my good friend, Mr. Buyer, and I am going to make that statement at this point in time.

So we will begin the clock and we will run it fairly for everybody involved.

Mr. LANTOS. Mr. Chairman, parliamentary inquiry.

Mr. MCCOLLUM. Yes, Mr. Lantos.

Mr. LANTOS. Mr. Chairman, at what point may one raise questions about the procedures?

Mr. MCCOLLUM. The procedures will come up after the opening statements because we have to ask unanimous consent each day to begin the process.

Mr. LANTOS. Thank you, Mr. Chairman.

Mr. MCCOLLUM. You are welcome. Yesterday we had quite an opening day and I think that you saw quite a bit of why we are having these hearings yesterday. You had quite a graphic picture painted of what was going on in the Branch Davidian compound.

You had some very strong statements made that paint a picture of David Koresh in less than flattering terms. And I do not think that any member of this panel, on either side of the aisle, had any false impressions before we started these hearings and we certainly do not today, that David Koresh was an outstanding citizen or that he did the right thing in what he did at his actions at Waco.

But we did need to lay that predicate. But in addition to that, yesterday, what I think is really important to these hearings is not the emotion of how he mistreated people potentially, or young girls inside that compound, although that is important—not necessarily to what we are after in these hearings other than to lay the predicate. What is really important is what was being done by the ATF and law enforcement and whether the conduct of the raid was appropriate.

During the course of the day yesterday we got quite a bit of testimony involving the questions of how they initially got involved in this process, the questions of whether they really were intent on

arresting David Koresh before they did the actual raid on the 28th of February and whether or not, indeed, the final aspect of all this before the raid was conducted was sanctioned properly by the Treasury Department.

And there are real questions that are still out there lingering from the end of the day yesterday about Treasury's role, about the accuracy of the report that Treasury put out, about a lot of the facts and the details about what really happened.

Today we will go through the planning stages. We have got four panels of witnesses. Tomorrow we will do the raid, itself. We will have plenty of opportunity to go into these questions.

Today, though, because he is going to be lead questioner, I am going to yield the balance of my time to the gentleman from Indiana, Mr. Buyer.

Mr. BUYER. Thank you, Mr. Chairman.

With regard to the military involvement in Waco, when you have examined a lot of the investigative reports there really is not a lot with regard to the military involvement. I think the image of the Bradley fighting vehicles, M-1 tanks set against the burning Mount Carmel compound calls into question the role of the military at Waco and that of local law enforcement.

Since that time, there has been a rapid speculation concerning the level of involvement of the U.S. Armed Forces and the National Guard in support of local enforcement during the planning and execution of the initial ATF raid in February 1993, as well as during the siege and the final assault, 51 days later.

Since before the founding of our Nation, Americans have deeply rooted concerns about the separation of the military from civilian affairs. In the Declaration of Independence, Thomas Jefferson lists, among his grievances, that the king had "effected to render the military independent of and superior to the civilian civil power."

Our Constitution addresses these issues, providing for civilian control of the military and assigning the President a dual role as Chief Executive Officer and Commander in Chief of the military. The Constitution also provides for a well-regulated militia, today known as the National Guard, which is subject to regulation by the Congress and controlled by the President in his role as Commander in Chief when those forces are federalized.

In 1878, the Congress passed the Posse Comitatus Act which prohibited, unless otherwise authorized by the Constitution or Congress the use of any part of the Army to enforce the laws of the land. Interestingly, it did so in response to accusations of at least two Republican State governments in the South who were in power only because of the presence of Federal forces. That statute remains in force today and it is an issue at Waco.

Over the years, Congress has made exceptions to the Posse Comitatus Act, particularly in the area of military support of the war on drugs. However, many would be surprised today when they learn that a great deal of military support can be obtained by local law enforcement without making a drug connection.

Many would also be surprised to learn that the National Guard, when under State control and receiving Federal funds, is exempt from the Posse Comitatus Act. The helicopters that supported the

ATF during the initial raid were flown by members of the Texas National Guard.

The purpose of this panel is to determine the role of the active duty military and the National Guard in the initial planning and execution of the ATF raid on February 28, 1993. Did the military overstep the bounds of the Posse Comitatus Act and provide inappropriate training prior to the raid? Were U.S. military forces directly involved in the planning and execution of the raid?

Answering these questions will help bolster America's trust in the military and Federal law enforcement. We need to seek a larger purpose. Because of the Nation's deeply rooted concerns about separating the military from civilian affairs we need to review the manner in which the military can legally provide support to local law enforcement and Federal law enforcement.

Has Congress gone too far and allowed too many exceptions to the Posse Comitatus Act? What is the proper role of the military and law enforcement? Should we further restrict law enforcement access to the vast capabilities that our military has to offer?

These are valid questions that need to be reviewed in the aftermath of Waco. I would like to thank all the panelists and many who have traveled a long way to testify. I know that many who will testify today, specifically members of the team that trained the AFT, have been hounded by many and that we will make sure that hopefully all the information and the truth comes out today.

Thank you. I yield back the balance of my time.

Mr. TAYLOR. Mr. Chairman.

Mr. MCCOLLUM. At this time, I recognize the gentleman from New York, Mr. Schumer, for 5 minutes.

Mr. TAYLOR. Mr. Chairman, a parliamentary inquiry?

Mr. MCCOLLUM. Yes, Mr. Taylor.

Mr. TAYLOR. Mr. Chairman, yesterday we made a request of the chair that four additional witnesses be brought forward to give us a full accounting of the events that led up to Waco. They were the authors of the series, "The Sinful Messiah"; and it was the woman who claims to have been held captive by Koresh for 3 months against her wishes; and the woman who claims Koresh compiled a hit list to murder ex-members.

Mr. MCCOLLUM. Mr. Taylor, if you work through your minority leadership—that request has never been made to me by either of the minority leaders.

Mr. TAYLOR. I made it on television in front of this committee.

Mr. MCCOLLUM. You did indeed.

Mr. TAYLOR. And you said you would take care of it.

Mr. MCCOLLUM. I said we would explore it with your minority leadership. I do not know if I was in the chair or Mr. Zeliff but we said we would explore it, and we will explore it. You made the point again today and we will explore it. We have not agreed to do anything. But we will explore it.

Mr. TAYLOR. In fairness to those members of this committee who want to know the events leading up to it, when will that decision be made?

Mr. MCCOLLUM. I do not know, Mr. Taylor, but it will be made, probably some time later today but we have not had a break. We ran the hearings last night until very late, until 11 o'clock, and we

got into a discussion with some of your leadership last night after we ran this hearing, and we reconvened this morning without having gotten together to discuss it among ourselves in any other way. That was not part of the discussion. I will take it under consideration today. We need to proceed in regular order today.

Mr. TAYLOR. Mr. Chairman——

Mr. MCCOLLUM. I am sorry, you are not——

Mr. TAYLOR [continuing]. We deserve the opportunity to vote on whether or not to subpoena those witnesses.

Mr. MCCOLLUM. You can always have a reservation of those opportunities.

Mr. CONYERS. Mr. Chairman, can I assure my colleague that we will bring this matter from the minority leadership to the attention of the chair immediately.

Mr. MCCOLLUM. You certainly may.

Mr. SCHUMER, for 5 minutes.

Mr. SCHUMER. Thank you, Mr. Chairman. And first let me begin by saying that once again that these hearings into the 1993 events at Waco can be very useful. I think they got off to a powerful start yesterday. We heard from 14-year old Kiri Jewell, who described how she was raped at the age of 10 by David Koresh. She told us there was widespread sexual abuse within the Branch Davidian compound. She also explained Koresh's instructions on how to commit suicide, "Put the gun into your mouth, back to the soft spot above your throat before pulling the trigger."

We also heard from Ray Jahn, the assistant U.S. attorney in Texas, who told us that the Davidians were armed with machineguns and believed that, "In order to die for God they had to be able to kill for God."

While listening to Kiri Jewell was difficult, it was critically important for us, here in our suits sitting behind this dias, to know what the women and men of law enforcement were faced with at Waco. David Koresh was armed to the teeth with machineguns, he raped 10-year old girls, and he had visions of mass destruction.

Some have the gall to ask what the testimony we heard yesterday had to do with law enforcement's decision? That is like asking what does ethnic cleansing have to do with decisions in Bosnia? Everything.

These are difficult problems that do not always end up the way we want them to, yet, as feeling and caring people we feel we must act. Law enforcement moved because they could not allow other Kiri Jewells, who were still inside the compound, to continue to suffer. Remember the ATF and FBI had to act quickly, on the spot. They did not have the benefit we have of hindsight.

Today we are going to hear about some serious mistakes made by the ATF but they were not made maliciously or as part of some evil conspiracy as some would have you believe. They made the mistakes because they heard the cries of the Kiri Jewells inside the compound. They heard the screams of the little kids being beat up by David Koresh with a wooden boat oar. The plan to enter the compound, however flawed its execution, was only made after careful planning and discussed down to the tiniest minutia. Let us get to the bottom of what caused the initial raid to go bad, but let us

not forget that it ultimately went awry because of the evil of David Koresh.

Mr. MCCOLLUM. Mr. Zeliff, you are recognized for 5 minutes.

Mr. ZELIFF. Thank you, Mr. Chairman.

Today we resume a joint congressional hearing into executive branch conduct regarding events at Waco, TX, in 1993. Yesterday we heard from 17 witnesses who described various aspects of the investigation and warrants leading up to the February 28 assault on the Branch Davidian compound by the ATF.

We heard from authors, former Davidians, lawyers who prosecuted surviving Davidians, ATF agents, ATF commanders, and former high-level ATF officials. As the 8 days of hearings into this tragedy unfold, we will hear from a total of 93 witnesses and we will question them all.

Whatever else we argue about we have worked very hard with the minority to meet their needs relative to witnesses and equal access to the truth. And I believe that we all want to know what happened at Waco and why.

During these hearings, our eyes must be fixed on our truth seeking and our oversight function as to what happened at Waco. These hearings are not just about NRA, or 14-year-old girls, they are about oversight of ATF, FBI, and the Department of Defense. In a nutshell finding out the truth is the essence of oversight and constitutional oversight, as I said yesterday, is part of the genius of our democracy, the checks and the balances.

Getting to the bottom of things, especially complicated and tragic things, takes a major commitment. We have that commitment and so far I think we are slowly making progress. While we may all agree, and I think we do, that David Koresh is not a nice person, we discovered a number of important facts yesterday. In addition to hearing disturbing and graphic testimony from a 14-year-old on the topic of child abuse, and more important about how David Koresh did live, we learned the following:

First, ATF agents testified for the first time that they actually refused an invitation by David Koresh to come and examine Koresh's firearms long before the deadly raid and that which followed. This new testimony corroborates, for the first time, the account also heard in the room yesterday of the Waco firearms dealer who knew Koresh.

In short, we know that ATF, for reasons that may have seemed sound at the time, rejected an early alternative to the raid. It simply was not pursued.

Second, we discovered that legal experts share certain criticisms of the search warrant ATF intended to serve on Koresh.

Putting aside the arrest warrant which might have been served on Koresh at a place outside the compound, we learned that the search warrant was filled with, "inflammatory language and was generally sloppy and may have contained factual inaccuracies."

Third, we learned that the ATF gave little or no attention to doing a knock and serve entry. ATF testified that siege planning began in December and formal raid planning began in January. As the committee heard yesterday, the raid plan kept gathering steam even though a social worker, who was investigating child abuse,

was openly permitted to enter the compound. Again, a viable option seems to have been underutilized, perhaps prematurely rejected.

Fourth, the Waco deputy sheriff testified that despite ATF's and the FBI's request for substantial military assistance, based on a supposed drug connection, and alleged drug lab within the compound, the sheriff had never seen and had no knowledge of any drug lab. This raises serious questions that today's panels will address shortly.

Fifth, we learned that one of the surviving Davidians believes, although ATF does not, that ATF guided helicopters shot through the roof of the compound. He also testified that he never saw child abuse, although we did receive contrary and graphic testimony from a 14-year-old child on this issue as well.

Finally, the former Davidian testified that he knew of no suicide pact or plan to set fire to the compound by Davidians.

Sixth, we learned, contrary to prior Treasury accounts, that at least one ATF agent did carry a loaded gun on board a helicopter that went to the compound on raid day, despite testimony from the prosecutor of Davidians that no one did so.

Seventh, we read internal ATF documents that say pages of ATF surveillance notes on Koresh were, "torn out" of the ATF surveillance logs. We also read that documents associated with a rehired ATF agent, previously fired due to his role in Waco, were "destroyed."

Finally, as the joint investigating subcommittees moved on into the night we heard from the widely respected former ATF Deputy Director who conceded, under questioning, that the Treasury report is "filled with falsehoods and distortion of the facts and amounts to"—and at first said, "Coverup," but changed the word coverup in later testimony.

We will hear more from him today and we will see more documents. The truth is being sought and new facts are starting to come out.

Today we will start to finally get into the substance of what these hearings are designed to do—bring out the facts as to what happened at Waco, to assign accountability and responsibility.

We owe the American people a full accounting of the truth, nothing less.

Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, very much, Mr. Zeliff.

Mrs. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman.

Yesterday we examined some of the events leading up to the decision to serve a search warrant at the Branch Davidian compound. We heard from two Branch Davidians who spoke about conditions at the compound prior to the raid. These hearings were convened to examine events before, during, and after the February 28, 1993, raid.

Some of the testimony was painful to hear, however, it was necessary to shed light on conditions that local and Federal law enforcement faced as they investigated charges. We will undoubtedly have testimony today, and in subsequent days, that will be painful and sometimes embarrassing. That is the point of holding these hearings and in our search for the truth, we cannot shrink from

looking at all the facts and points of views. I look forward to hearing today's witnesses.

Mr. MCCOLLUM. Thank you, very much, Mrs. Thurman.

At this point, without objection, the questioning procedures which all the members have before them and agreed to yesterday, by the chairmen and the ranking members of the two subcommittees and followed at yesterday's proceedings, will be utilized at today's hearings. Is there any objection?

Mr. LANTOS. Mr. Chairman, reserving the right to object——

Mr. MCCOLLUM. Yes, Mr. Lantos.

Mr. LANTOS [continuing]. I would like to raise some issues and ask some questions, if I may?

Mr. MCCOLLUM. Certainly.

Mr. LANTOS. Let me also say, by the way, that in my judgment you have conducted your part of these hearings with great dignity and effectiveness and I want to commend you.

Mr. MCCOLLUM. Well, thank you.

Mr. LANTOS. Last night at the conclusion of the hearing, a group of us, from each side, met privately to discuss the issues that several of us raised at the beginning of yesterday's proceedings.

As Mr. Taylor so accurately points out, it is important to understand the events that led up to Waco. I believe it is equally appropriate and necessary, in order to dispel the cloud that hangs over these hearings, to discuss the events that led up to the holding of these hearings—the people involved, the circumstances, the financing, the intricate intertwining of committees, and staff of the National Rifle Association.

At last night's private meeting, we requested the Republican leadership to return to us with an answer concerning the invitation to the relevant NRA officials to come here under oath and testify, and you and Mr. Zelfiff indicated that you will need to consult with higher authorities and then give us your answer.

I wonder if we may have that answer?

Mr. MCCOLLUM. If the gentleman would yield?

Mr. LANTOS. I would be happy to yield.

Mr. MCCOLLUM. As I discussed last night with you, it is our opinion—and I have the utmost respect for the gentleman and understand the sincerity of his request—I want to make that statement as well, as you have been complimentary to me, but as I said last night and we discussed in this meeting, the entrance of the question that you have posed in a formal fashion, a subpoena in this joint subcommittee during the hearings we are undertaking now, would go to procedural and to questions of the conduct of committee staff and so forth which are not to the substance of the Waco examination, itself.

And I do oppose any formal introduction of that into these hearings. However, as we discussed last night, we are willing and we are going to discuss the informal request aspect of this, about the opportunity for discussions with, perhaps, NRA about this matter with our leadership.

But both said, I think, I know I said it to Mr. Schumer as we were walking out last night that it would not be likely to be possible for that discussion to have been concluded by the beginning of today's hearings and they have not been.



I had a call in to our leadership this morning and we did not get out of that meeting, as you know, until nearly midnight last night. I have not yet had an opportunity to have a discussion and so consequently I leave that matter, as I think you would have expected me to at this point, in an unresolved, yet to be determined, state.

Mr. LANTOS. Reclaiming my time, Mr. Chairman, there are a couple of observations I would like to make. I think it is very reasonable for you to point to the time constraints and your inability, thus far, to consult with your leadership. I would like to propose that we take a 1-hour break at the conclusion of the morning session which will give you an opportunity to consult with your leadership.

This side does not wish to have this matter delayed ad infinitum. I fully disagree with you, with great respect, that we are dealing with a procedural issue. The intertwining of the National Rifle Association in the preparation of this hearing, in a surreptitious manner, goes very much to the heart of the substance that we are dealing with. That may not be your view, but it is the view of many of us on this side.

None of us is entitled, unilaterally, to determine what is substance and what is procedure. In our judgment this is very much substance.

I also believe that, you know, some of the observations, even this morning, reveal, at least to me, a profound confusion of substance and procedure.

Mr. Zeliff, for instance, stated and I am quoting, "Koresh," he just said it 5 minutes ago, "Koresh is not a nice person." You said that verbatim.

That is like saying that Hitler is not a lovable guy. I mean, you know, words have consequences. To say that somebody is not a nice person does not begin to convey the monstrous character of this demon. We need to know what the NRA did for the preparation of this hearing.

Mr. MCCOLLUM. Would the gentleman yield, again?

Mr. LANTOS. I will be happy to yield but I would like you, Mr. Chairman, to respond to my new and very polite, specific request that at the conclusion of this morning's proceedings a recess be taken to allow you and Mr. Zeliff to consult with your leadership.

Mr. MCCOLLUM. If the gentleman would yield—

Mr. LANTOS. I would be happy to yield.

Mr. MCCOLLUM [continuing]. I would like to respond both to your point and to your question. First to your point, I do not know maybe the word substance versus procedure is not technically correct, but the subject matter of these hearings is to get at the question of what happened at Waco. And the question of the issues that you are raising with regard to NRA involvement or whatever, go to issues that may be fundamentally a place that you could bring the proceedings in an ethics committee complaint or in a criminal complaint or in some other forum. But I am not personally convinced in any way that that has a place in the particular hearings we are having today.

Now, the committee is willing to do what I indicated to you yesterday and I will do that and so will Mr. Zeliff. We have been unable—we just discussed it very briefly with Mr. Clinger and Mr.

Hyde this morning—but we have been unable to sit down with them more than 5 minutes.

We will take a lunch break, in due course today, as we did yesterday. I do not know if we will be able to conclude or have an opportunity to discuss these matters. We are chairing these hearings. We are proceeding with them today and we are very consumed with them.

But I would assume by sometime before the end of the day, today, there will be contact made and we will have discussions and we can have a response for you either later today or, certainly the first thing in the morning.

Mr. SCHUMER. Will the gentleman yield?

Mr. LANTOS. Reclaiming my time, I am happy to yield.

Mr. SCHUMER. I thank the gentleman.

I first want to underscore the gentleman from California's point. What happened in preparation of these hearings is intrinsically related to what these hearings are all about, how the issues are presented, are they done in a full and fair and impartial and unbiased way?

So the two issues are related. Now, there are various ways to handle that. But to say that maybe 3 months from now we will look at what happened after these hearings are over is closing the barn door after the horses are out of the barn. Plain and simple.

And so we urge the committee, the majority in the committee to resolve this issue quickly with alacrity. Because the issue of the fairness of the hearings, and the issue of how the NRA influenced those hearings could be totally, could be none at all, it is probably somewhere in between, is very, very, very important in terms of the fairness of the hearings; something that I know both the gentleman from Florida and the gentleman from New Hampshire have tried to consummate.

And so I would say, again, it would be my judgment that we would continue under the procedure we have agreed to, but please ask the majority to come to some conclusion one way or the other by the end of today.

Mr. CONYERS. Mr. Chairman, reserving the right to object—

Mr. MCCOLLUM. Yes, Mr. Conyers.

Mr. CONYERS. I would like to associate myself with the remarks of the gentlemen from California and New York. The problem with the suggestions that we have received from the Republicans in this committee is that we should go to the Ethics Committee to file a complaint or perhaps we should go to the Department of Justice and file a criminal charge.

The defect with those suggestions is that we do not know what the problem is that we would like to complain about. We are searching for facts right now. We are trying to determine what the role of NRA people has been during the investigation process.

And so I do not have an ethics complaint now. And by you telling us to do everything but cooperating with getting the people before us to determine the depth of the problem, the nature of the problem, is really quite evasive. The reason being that these hearings are proceeding under a cloud around this question.

And so I am hopeful that this will be determined tomorrow. I am going to ask, based on the thoughtful presentation of Tom Lantos,

that we do not object to the proceedings today and that we let our agreement go forward with the understanding that this is the last day that we are going to tolerate any stalling on the questions of how the NRA may have impacted the investigation leading to these hearings.

Mr. MCCOLLUM. Would the gentleman yield?

Mr. CONYERS. I hope I made myself clear.

Mr. MCCOLLUM. Would the gentleman yield just for the moment?

Mr. CONYERS. Of course.

Mr. MCCOLLUM. First of all, I do not believe that you can expect necessarily to have a favorable resolution to your perspective on this even should we go through the leadership as we have said we would just to have a discussion.

Because, as I have said earlier, it seems to me you are pressing for a matter that I personally would not deem to be appropriate to these hearings. So let me at least broach the subject this way so that everybody understands this as we discuss last night.

Should we not reach concurrence on this and should you or Mr. Lantos or Mr. Schumer or anyone else wish to object to the unanimous consent request that we have been conducting either today or tomorrow about the process, we will revert to the 5-minute rule. And we will simply go through a longer process but we will go forward with the hearings. I just want everybody to understand that that will be the net sum gain of this.

I am going to yield at this point in the reservation request to Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman, reserving the right to object. I think one of the most telling remarks I have heard this decade was just uttered by my good friend, Mr. Conyers. They got to find out what the problem is.

They are a bunch of legislators in search of a problem. Anything but let us proceed with hearings on Waco. Now, the fact is the NRA had no official, unofficial, any relationship with any of the Republicans on any of the subcommittees conducting these hearings. And if you wish to question the conduct of a private party who volunteered their services, quote/quote, then go question that party.

But I do not intend to recommend a subpoena because that is a diversion from what we are inquiring about. Waco, Waco, Waco, not NRA. I do not——

Mr. CONYERS. Will the gentleman yield?

Mr. HYDE. Not at this time. I do not propose to inquire who your staff has consulted with on this or any other matter of concern in——

Mr. SCHUMER. Will the gentleman yield?

Mr. HYDE. In a moment. Whoever you talk to is your business but to go off on an excursion as to what some third person, an outsider, may or may not have done and what its possible impact is, at this time, is simply an effort to obfuscate and to divert the attention of these committees to the facts surrounding Waco.

Now, if the gentleman can cite any unfairness, if the gentleman can cite the fact that they have not been permitted to ask questions fully, they have not been permitted to come forward with witnesses, every indicia of fairness is here. And we have bent over backward to make sure that the hearings are fair and complete.

We are not taking sides here. We are not here to protect the ATF, to protect David Koresh. We are here to find out what happened, to learn what happened, what caused it, and how we can make sure something like this——

Mr. CONYERS. Would the gentleman yield?

Mr. HYDE [continuing]. Which is a tragedy, could never happen again.

Mr. CONYERS. Would the gentleman yield? Would the gentleman yield to me, please? He has referred to me.

Mr. HYDE. Oh, indeed, I have. And if Mr. Schumer wants me to refer to him to elevate him——

Mr. SCHUMER. No; I just want you to yield to me. But if you want to refer to me, that is your——

Mr. HYDE. I will. Mr. Schumer, Mr. Lantos, too. Yes, go ahead. I yield to the——

Mr. WATT. Is it necessary for the chairman to refer to one to get into this conversation? I would like for him maybe to refer to me, too.

Mr. HYDE. Absolutely, Mr. Watt.

Mr. WATT. Would you yield to me, then, so that I could raise a different point?

Mrs. THURMAN. Reserving the right to object on a different point.

Mr. MCCOLLUM. First of all, on his reservation, does Mr. Hyde yield to anybody, or are you——

Mr. HYDE. I yield to Mr. Conyers.

Mr. CONYERS. I thank the gentleman for yielding. The fact of the matter is that I put this in the gentlest way possible now as subject to the most extreme description that I have ever heard. The reason that we need to talk to these people is that we need to have the subpoena power which only the majority can give us.

Now, you were not at the meeting last night when we went through this in detail, and I thought we were making some progress. And we are not looking at your staff, sir, and that was another thing that we agreed in the subpoena process. We are looking at the people who may have tainted the investigation. Where it will lead, I do not know. But I am saying this, not trying to stall Waco. The hearings can proceed if you will only allow us to have the authority to call the witnesses.

Mr. HYDE. Reclaiming my time just for a second, how in the world have these hearings been tainted? Would the gentleman tell me? How was taint injected into——

Mr. LANTOS. If the gentleman would yield?

Mr. HYDE. No, no. I am yielding to Mr. Conyers.

Mr. CONYERS. The reason we do not know whether they have been tainted is that we have not been able to call the parties forward.

Mr. HYDE. So it is speculation on top of a hypothesis.

Mr. LANTOS. Reserving the right to——

Mr. CONYERS. There is no speculation, there is no hypothesis. We want to talk to the people.

Mr. HYDE. No one is stopping you from talking.

Mr. CONYERS. We cannot talk to them, Mr. Chairman, as you well know, unless they are prepared to come in if we require them to. They are not going to voluntarily come in.

Mr. HYDE. Continuing my reservation, I yield to Mr. Buyer of Indiana.

Mr. BUYER. Thank you, Mr. Chairman.

One thing I have learned growing up on the Tippecanoe River back in Indiana, and that is, where the river is the deepest, it runs the most silent; and where the river is the shallowest, it makes the most noise. That is one thing I learned growing up on the Tippecanoe River, and that is what we have here, is a very shallow argument, and they are making a lot of noise.

Mr. HYDE. Is the gentleman saying that some of our objectors are all wet? Is that it?

Mr. BUYER. No, no. Not at all. But that is what we have here. Mr. Chairman, I think your points are very well taken that we have a tremendous diversion tactic being done here. Hopefully, we can get on with the Waco hearings. There are a lot of good points that need to be made. I have worked several months, and so have my staff, on the issues about the military involvement. At no time have we ever, ever been contacted in any way with regard to the NRA. So this is a tremendous red herring, and I think the American people are recognizing that. And if my colleagues want to continue with that, I think the American people will judge you that you want to participate in dilatory tactics, obstructionism for us to get into what were the problems here. We want to make sure that we restore the faith and confidence of the American people in our law enforcement activities, and that is what we seek to do.

But if you want to obstruct that form of seeking justice, go right ahead, and I think the American people will not be kind in their judgment on you, and I yield back to the chairman.

Mr. CONYERS. Reserving the right to object—

Mr. HYDE. Continuing with my reservation, I yield to Mr. Clinger, the chairman of the Reform and Oversight Committee.

Mr. CLINGER. Thank you very much, Mr. Chairman, for yielding to me. I think that the only issue I would like to raise here is you say you cannot speak with or discuss any of these matters with the people that may or may not have had some involvement with the NRA. Has anybody actually tried to speak to them? My understanding is that the NRA has volunteered, has offered to come up and discuss these matters. You are asking this committee to involve itself in something that we had nothing to do with. We were not in any way involved with what the NRA was about.

I think if there are questions that you want to address to the NRA, call them up and ask them if they would come and discuss it. I think they have indicated they would be willing to do that.

Mr. MICA. Would the gentleman yield?

Mr. HYDE. Continuing with my reservation, I yield to Mr. Mica of Florida.

Mr. MICA. Mr. Hyde and Mr. Chairman and members of the committee, I am a little bit concerned about what is proceeding here, and I want to tell you, too, from our side of the aisle that, if the other side continues with these requests for subpoena, some of us on this side would like to see—and our side grants this request. We would like to also see an expansion of people brought before this panel.

There are reports in the media that, in fact, the White House has brought in, I do not know the correct pronunciation, Rahm Emanuel, one of the more aggressive members of a political team put in charge of coordinating the White House public response, joining a team of Treasury Department aides. And I want to know if they are attempting to influence what we heard here yesterday in a potential coverup of what is going on and the blame here. So if we are going to expand this, I would demand from this side that we bring them in, we bring in Mr. John Podesta, who also, I think, is in the private sector now, who has been brought in, and that when this committee and this majority cannot get access to the weapons in Waco and then the minority brings them in, I want to know what is going on here and how you are subverting and perverting the system and this process.

All we want is the facts of what took place there. I want to know if those guns, in fact, were altered. I want to know, in fact, if this man did have illegal weapons. And I think the American people deserve that right to know. So if we are going to expand the scope of this, then I am going to sit here and reserve the right to object, and I am going to demand that we get to the bottom of this as to how your side is operating in this setting.

Mr. HYDE. Well, I now will yield to the gentleman, under my reservation of right, the gentleman from Brooklyn, Mr. Schumer.

Mr. SCHUMER. Thank you. Brooklyn and Queens now, Mr. Chairman. Moving out. I do not know about moving up.

I would just make two points, first to explain to my colleagues on the other side. You see us as sort of—the gentleman from Illinois, whose integrity is unquestioned, I think, by anybody on this side, is talking about, well, we are going to get into committee documents, we are going to get into what the staff did and who they have talked to. To us, that seems rather funny and anomalous because your side is making that very same argument with the White House, first with the President's documents, now with Webb Hubbell's documents. The very same argument, and this is not a tit-for-tat issue.

I have a complete feeling that you are looking at those sincerely. You want to overturn every stone, even as farfetched as it seems to us. Well, we do not think our argument is farfetched. You think it is. You do not think your argument is farfetched. We think it is. But the two are quite analogous.

So what I would say is this: It seems to me, first of all, that let's treat each argument with equal weight. We are not doing that right now. Oh, yes, there is a coverup of Webb Hubbell or something because one phone log is missing, or the White House did not reveal President Clinton's personal scribbles, which they then did. That is important. That is essential. And I hear words come from the other side of coverup. And yet when we want documents—it has been documented in the media, when we want to interview witnesses who relate to the hearing process and involves going into the same type of documents, oh, that is absurd, that is far afield, et cetera.

To resolve this in a way—I do want to continue with the hearings, as I have all along. I think yesterday was very, very helpful

in terms of setting the perspective and setting the tone for the American people. But I would say——

Mr. HYDE. Would the gentleman—reclaiming my time.

Mr. SCHUMER. It is your privilege.

Mr. HYDE. Would the gentleman say yesterday's hearings were fair?

Mr. SCHUMER. I would say that in general we were given certain opportunities, yes. There were other witnesses we wanted to call who could not come. But given the fact of majority, what does fair mean? Were they 50-50? No. But did you give the minority some rights to be heard and have some of our witnesses? By all means.

Mr. HYDE. The gentleman is a master of circumlocution.

Mr. SCHUMER. Thank you.

Mr. HYDE. I yield back and I thank the chairman.

Mr. WATT. Reserving the right to object, Mr. Chairman——

Mr. MCCOLLUM. Do you reserve the right to object, Mr. Schumer?

Mr. SCHUMER. I thought he had yielded back to me.

Mr. MCCOLLUM. He yielded back to the Chair. Do you reserve the right to object?

Mr. SCHUMER. Well, then, this river will stop flowing for the moment.

Mr. MCCOLLUM. Mr. Watt, do you reserve the right to object?

Mr. WATT. I reserve the right to object.

Mr. MCCOLLUM. Mr. Watt, you are recognized.

Mr. WATT. Thank you, Mr. Chairman.

Mr. TAYLOR. Reserving the right to object.

Mr. MCCOLLUM. Mr. Watt has been recognized.

Mr. WATT. I thank the chairman for recognizing me, and I hate to disappoint Mr. Buyer, but since I did not learn to swim until late, I have been swimming in shallow water for a long time, and I continue to do so. Most of what we are swimming in here is shallow, in fact, in my opinion.

I am delighted, first of all, that the chairman's resolution of this issue, if we, in fact, get to the point of objecting to the proceeding, is to go back to regular order, and so I just wanted to let you know that even if you all resolve this issue, it seems to me that you still may have an objection. If it will get us back to regular order, this whole notion that you are going to save time by coming up with a new procedure which deprived members on both sides of the opportunity to question witnesses and do what we customarily do and do what we are elected to do, I think has now been shown to be a simple farce.

Mr. TAYLOR. Would the gentleman yield?

Mr. WATT. So everybody is now taking their reservation of right to do what they had the right to do in the first place if you had not put this procedure into effect. And it is just another example of how the procedures in this House that have worked so many years have a sense of rationality to them and a sense of fairness to them and equalizes the opportunity of members to participate because we are, in fact, equal.

What has happened here is that several people on this committee have used this hearing as a political stage. The leadership is using it as a political stage and does not want anyone else to play in this, and this should not be about politics. If we are going to have a

hearing in this committee, it ought to be about finding what the facts are and moving towards some kind of legislative rather than some kind of political conclusion.

Ms. ROS-LEHTINEN. Would the gentleman yield?

Mr. MCCOLLUM. Would the gentleman yield to the chairman?

Mr. WATT. I would be happy to yield as soon as I finish making my point, and then I am through with this, again, for today. I will be back again tomorrow when you all try to let me participate again. Maybe I can reserve the right to object again tomorrow and get involved in the process.

But basically what you all have done is come up with a set of rules that have generated an hour or hour and a half of delay at the beginning of every day, which we could have used for some constructive purpose rather than the destructive purpose that it has turned out to be used for.

Ms. ROS-LEHTINEN. Would the gentleman yield?

Mr. WATT. I would be happy to yield.

Ms. ROS-LEHTINEN. I thank the gentleman, and I wholeheartedly agree with his comments to let's get on to the real issues of the day.

Mr. WATT. Well, I thank you for agreeing with me. I will claim back my time now since you have agreed with me.

Ms. ROS-LEHTINEN. No, no.

Mr. WATT. Go ahead. I am sorry. Go right ahead. I will yield to you.

Ms. ROS-LEHTINEN. I think that we have some very important points to cover, and I think that tactics to just divert the real issue of the day I think are quite lamentable. And I say this as a person as well as with Mr. Blute's comments yesterday, who voted for the Brady bill, who voted in favor of the ban on semi-assault weapons, who gets no support from the NRA. If they rate legislators, I am sure that I have as low a rating as Mr. Schumer and many others. But I believe that the purpose of this hearing—

Mr. SCHUMER. Wear it like a badge of honor.

Ms. ROS-LEHTINEN [continuing]. Is a very important one, and I think today's topics are very important. We are going to talk about—

Mr. WATT. Well, I wonder if the gentlelady—reclaiming my time, I wonder if she would join with me in insisting that the leadership provide the opportunity for everybody on this committee the opportunity to participate in it. I hope you will vote in favor of that when—

Ms. ROS-LEHTINEN. If the gentleman would further yield—

Mr. WATT [continuing]. And if the time ever comes that we get to that. And I really do not want to prolong the hearing. We are wasting taxpayer money—

Mr. CLINGER. Mr. Chairman, I call for regular order.

Ms. ROS-LEHTINEN. If the gentleman would yield—

Mr. CLINGER. Mr. Chairman, I would call for regular order.

Mr. MCCOLLUM. Regular order has been—

Ms. ROS-LEHTINEN. If the gentleman would yield, I am—

Mr. MCCOLLUM. Now, hold on. Hold on.



Ms. ROS-LEHTINEN [continuing]. Concerned with the taxpayer's money being abused in this raid as well, and I think that if we would have the opportunity—

Mr. MCCOLLUM. I am sorry. I have got to interrupt the gentlelady and the gentleman. Regular order has been called by Mr. Clinger. Under the rules of the House and the rules of committee, when regular order is called in these circumstances where somebody is discussing a reservation of the right to object, at that point in time an objection has to either be given or not. There is no further debate. Is there an objection to the proceedings today?

Ms. ROS-LEHTINEN. I object.

Mr. WATT. I object.

Mr. MCCOLLUM. We are going to proceed now under the 5-minute rule, and I think we should all know that we are going to have about 2½ hours for each round of questions, and we will have four panels today. We probably will not complete all four today and may shift one to tomorrow. But we are going to proceed right now with the first panel.

I call the first panel of witnesses, if we can have them come forward. First is Robert Sanders. Robert Sanders was formerly the Deputy Director for Enforcement of the Bureau of Alcohol, Tobacco and Firearms. If Mr. Sanders could come forward and take his seat on the left side.

The second witness is Wade Ishimoto. Wade Ishimoto is technical manager at Sandia National Laboratories in Albuquerque, NM. He is also a former military officer with extensive tactical training.

George Morrison is our third witness. George Morrison is the former chief of the Metro Tactical Division, Los Angeles Police Department.

Our fourth witness is John Coonce. John Coonce is an expert in tactics related to drug enforcement operations for the Drug Enforcement Administration.

And our last witness on this panel is Donald A. Bassett. Donald Bassett was an FBI Special Agent for over 30 years and head of the FBI's Crisis Management Team during the period of time.

If each of you would rise, I would like to ask you to raise your right hands.

[Witnesses sworn.]

Mr. MCCOLLUM. Let the record reflect that each of the witnesses answered in the affirmative. We are now ready to proceed with the questioning in the 5-minute order.

I am the first one to be recognized under this process, and I am going to yield my 5 minutes to Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman, for yielding.

Mr. Chairman, I am going to take 1 minute to just tell the panel what my point of view and point of reference in these questions is. My questions are going to emphasize the role of law enforcement agencies. I would point out that the headlines in a Washington daily paper this morning read, "Teenager Tells Waco Panel of Koresh's Lust." This was a Washington daily paper. I cannot imagine how the tabloids are possibly going to top that particular headline.

Now, regardless of whether one uses the euphemism that David Koresh was not a nice guy or the suggestion that he was a monster

or anywhere in between, David Koresh did not work for the Federal Government in 1993. And I think that we can assume that Federal law enforcement agents have to regularly deal with individuals who are not nice guys or who are, in fact, monsters. But we still at all times expect them to act professionally. And one of the main purposes of this hearing is to determine if that did happen or did not happen.

One quick final word. I just want to say that if there are shortcomings in law enforcement shown in this hearing, I would not want it to be a broad brush that paints every Federal law enforcement agent around the country. Hundreds of agents day in and day out do their work in a dedicated and professional manner regardless of mistakes that might be made by some others.

With that, gentlemen, I want to concentrate on the issue of the use of the military with local law enforcement. To speed matters along here, I want to say that it is my understanding—and I would ask if any of you would correct me—that normally speaking, the military does not interact on a regular or daily basis with civilian law enforcement, whether it is local or whether it is Federal, on day-to-day law enforcement. Does anyone disagree with that conclusion?

Mr. SANDERS. No, sir.

Mr. SCHIFF. All right. Seeing no disagreement, can I move on for a moment? It is my further understanding that because of the limitations in the Posse Comitatus Act which limit Federal military authority to work with civilian law enforcement and for financial constraint reasons, even if the Posse Comitatus Act does not come into relevancy, when the military does act with local law enforcement there is usually a special reason why they do so, a special circumstance, a special kind of crime. Would anyone disagree with that? Mr. Ishimoto. And, by the way, Mr. Ishimoto, being from Sandia National Laboratories in Albuquerque, NM, may I give you a special welcome here today? Please go ahead.

Mr. ISHIMOTO. Thank you, Mr. Schiff. And may I emphasize that I am not here as an official representative of Sandia National Laboratories but as a private citizen that was asked to assist in the Treasury review.

My disagreement, sir, is with respect to the fact that the military frequently gets involved in terms of training law enforcement officials in many different circumstances away from specific law enforcement operations.

Mr. SCHIFF. OK. Does it normally train for raids, Mr. Ishimoto?

Mr. ISHIMOTO. Raid training has occurred in many, many instances, especially with the formation of the Joint Task Force 6 operation, in particular, but with longstanding things that were occurring before.

Mr. SCHIFF. Let me try to move on just because, as you have heard, we have changed the procedures here. Isn't a drug connection the most frequent or a frequent reason why the military is used to assist civilian law enforcement? Would you agree with that, Mr. Ishimoto?

Mr. ISHIMOTO. Yes, sir.

Mr. SCHIFF. All right. Now, let me ask, Mr. Sanders, you are now retired from the Alcohol, Tobacco and Firearms Department; is that right?

**STATEMENT OF ROBERT E. SANDERS, FORMER DEPUTY DIRECTOR FOR ENFORCEMENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. SANDERS. Yes, sir, Mr. Schiff.

Mr. SCHIFF. Pardon?

Mr. SANDERS. Yes, that is correct.

Mr. SCHIFF. Does the Alcohol, Tobacco and Firearms Department normally investigate whether somebody is operating a methamphetamine-creation laboratory?

Mr. SANDERS. Not normally. Occasionally, the ATF jurisdiction does touch upon drugs because of the nature of the offender, not the nature of the offense. In other words, if the offender is violating the Federal firearms laws, then it would come within the purview of ATF jurisdiction.

Mr. SCHIFF. But if a central issue of law enforcement is, in fact, a drug operation, under Federal organization would that not more be the jurisdiction of the Drug Enforcement Administration?

Mr. SANDERS. Yes, sir, that is right.

Mr. SCHIFF. Mr. Coonce, you are with the Drug Enforcement Administration. Do you agree with that statement, that normally the Drug Enforcement Administration handles drug enforcement issues?

Mr. COONCE. Yes, sir, I do.

Mr. SCHIFF. Mr. Chairman, I just want to hold my time. My time is shown as expired, Mr. Chairman, and I do not want to create a precedent here.

Mr. MCCOLLUM. Mr. Schiff, your time has expired at this point. Thank you, Mr. Schiff.

Mr. SCHUMER, you are recognized for 5 minutes.

Mr. SCHUMER. Thank you, Mr. Chairman.

First, I would just make one point in reference to Mr. Schiff's point, and that is, the issue of Mr. Koresh, who he was, what he was, was first brought up by the witness—Mr. Morrison, was it? The professor from Texas. That was his whole testimony. He was chosen by the majority, so obviously people think it is relevant to this hearing, despite protests after you heard what you did not like. But Mr. Morrison's whole testimony was about the mind-set of and the people who wrote in his books, of Mr. Koresh—was it Morrison? The second witness yesterday. Mr. Wright. Excuse me. So obviously both sides think that that is relevant.

What I would like to do is ask a few questions in my 5 minutes to Mr. Sanders. My first question, Mr. Sanders, is: You have been counsel and represented a number of clients as defendants in criminal cases brought by the ATF, and plaintiffs in civil litigation against ATF, have you not?

Mr. SANDERS. That is correct, sir. Not plaintiffs in any tort suits. I do not do any tort suits.

Mr. SCHUMER. But you have done them in Bivens-type lawsuits; correct?

Mr. SANDERS. Yes, administrative matters and licensing matters, importing matters, relating to firearms.

Mr. SCHUMER. OK. And there are a good number of suits where you have been the lawyer opposing the ATF; is that right?

Mr. SANDERS. That is correct, sir.

Mr. SCHUMER. My next question to you is: In fact, your law practice is pretty much one of attacking the ATF; isn't that right?

Mr. SANDERS. No, I would not—

Mr. SCHUMER. Or representing people against the ATF. Let's not characterize it. That is the basis of your—

Mr. SANDERS. I would characterize it as representing private clients who are accused or are interested in obtaining something from the executive branch of the Government.

Mr. SCHUMER. OK. Does the NRA or any of its affiliates refer those cases to you on occasion?

Mr. SANDERS. I receive referrals from all quarters: from word of mouth, from special interest groups.

Mr. SCHUMER. Do you get some—I understand you will take them, a good case, from whoever, but does the NRA refer cases to you?

Mr. SANDERS. Yes, they do, sir.

Mr. SCHUMER. A significant number?

Mr. SANDERS. I would not say a significant number. Maybe on the average of three or four a year.

Mr. SCHUMER. Let me ask you a few more questions here, because just to tell my colleagues that you were the panelist who was identified as a former ATF enforcement person, although it is true—what year did you leave the ATF?

Mr. SANDERS. 1984, sir.

Mr. SCHUMER. 1984. So long before Waco was a glimmer in anybody's eye. You know nothing about the Waco issue itself.

Mr. SANDERS. Absolutely. I have no personal knowledge of the facts.

Mr. SCHUMER. OK. Do you know Tanya Metaksa?

Mr. SANDERS. I have met Ms. Metaksa. I do not know her.

Mr. SCHUMER. Have you been with her, met with her or been together with her in the last 4 or 5 months?

Mr. SANDERS. I have, yes, sir.

Mr. SCHUMER. OK.

Mr. SANDERS. I have not been with her, but in a setting where she had been present.

Mr. SCHUMER. Yes. Well, that is what I mean. In the same room. Can you tell us when and where?

Mr. SANDERS. I was present with her on probably three occasions.

Mr. SCHUMER. Right.

Mr. SANDERS. One was at the NRA building in Virginia. One was at the NRA office in Washington. And one was in the office of a Congressman.

Mr. SCHUMER. Which Congressman was that?

Mr. SANDERS. It was the chairman of the Appropriations Committee.

Mr. SCHUMER. And what was the purpose of that meeting?

Mr. SANDERS. I met with Mr. Lightfoot because it was my understanding that he was interested in hearing some views about ATF.

Mr. SCHUMER. And were you ever introduced by her as on retainer by the NRA?

Mr. SANDERS. I was not, sir, and I am not.

Mr. SCHUMER. Are you sure?

Mr. SANDERS. Pardon?

Mr. SCHUMER. You are sure of that? You are under oath.

Mr. SANDERS. Yes, sir.

Mr. SCHUMER. OK. Next question: Have you had this relationship with the NRA for quite a while in terms of referring cases, meeting with them, et cetera?

Mr. SANDERS. Yes, sir, I have.

Mr. SCHUMER. Do you know Warren Cassidy? He is the former NRA executive director for legislative action.

Mr. SANDERS. Yes, sir. He was in that position when I was Assistant Director of ATF.

Mr. SCHUMER. Pardon? I did not hear that.

Mr. SANDERS. He was in that position when I was the Assistant Director of ATF.

Mr. SCHUMER. But did you know him after you left ATF?

Mr. SANDERS. I do not believe I ever met him after I left ATF.

Mr. SCHUMER. I see. What was your relationship with him when you were at ATF?

Mr. SANDERS. I met him. That was the extent of it.

Mr. MCCOLLUM. Mr. Schumer, your time is up.

[The prepared statement of Mr. Sanders follows:]

PREPARED STATEMENT OF ROBERT E. SANDERS, FORMER DEPUTY DIRECTOR FOR ENFORCEMENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mr. Chairman and Members of the Subcommittee

Thank you for inviting me to appear before the Subcommittee as a witness in the oversight hearings entitled, "Oversight of Executive Branch Conduct in the Matter of the Branch Davidians."

I had a twenty-four (24) year career in the Executive Branch of government; specifically in federal law enforcement. As a Special Agent within the Department of the Treasury, I worked as a street agent in New York, Connecticut, Florida, Tennessee, Baltimore and New Orleans. Following my field experience, I held every supervisory, management and executive position in the Office of Criminal Investigations of the Bureau of Alcohol, Tobacco and Firearms (BATF). I was a first line supervisory agent; Organized Crime Strike Force Representative; Chief of the Organized Crime Branch; Assistant Special Agent in Charge, Washington District Office; Special Agent in Charge, Chicago District Office; Regional Director, Midwest Region; and Assistant Director, Criminal Investigations. The latter position was then the top law enforcement job in BATF, responsible for supervising criminal investigations of firearms and explosives violations nationwide. Throughout my career, the investigative resources entrusted to me were allocated in conformity with the legislative intent of the federal firearms statutes; providing assistance to state and local law enforcement in their fight against violent crime and violent criminals.

In addition to the experience outlined above, my work in the Office of the Secretary of the Treasury and with the Department of State may be helpful in shedding light on other areas of concern to this Subcommittee. I served as a Special Assistant to the Assistant Secretary of the Treasury under Secretary William E. Simon and for a brief time under Secretary Michael Blumenthal. In that capacity, I participated in a major reorganization of BATF in 1976 and was awarded the Meritorious Service Award for that work by then Secretary William E. Simon. My other duties involved work with law enforcement policy development generally, operations reviews, management and organization studies of BATF and the other Treasury law enforcement agencies. I have first hand experience with the review processes within

Treasury and the methods of informing and coordinating sensitive and significant law enforcement operations with other Executive Branch entities.

I also served as a Police Advisor to the National Police of South Vietnam for the Public Safety Division (PSD) of the Agency for International Development (AID) of the Department of State in the years 1966, 1967 and 1968. I rose to the position of Chief, Regional Public Safety Director, II Corps, Nhatrang, the primary advisor to the Police Chief of thirteen (13) provinces ranging from the Central Highlands to the central coastal provinces. As part of the United States advisory effort in II Corps, the Public Safety Division provided assistance and advice to the National Police Field Force. In that position, I was exposed to the para-military concept of policing, based on the British counter insurgency model in Singapore. The Police Field Forces of South Vietnam were deployed in insecure rural villages and hamlets, fitted with light infantry equipment and designed to walk a beat in platoon or company strength while adhering to civilian principles of criminal justice.

I participated in many studies and reviews of law enforcement operations, plans, procedures, and problems including:

President Carter's Reorganization Project which conducted a survey of all Federal law enforcement activities, authorities, organizational missions, and responsibilities, and assessed the quality levels of training, resources, and budget;

White House Office of Drug Abuse Policy as a working member of three inter-Cabinet committees; Narcotics Enforcement, Narcotics Intelligence, and Border Management;

Testified as expert witness on the relationship of firearms availability to violent criminals before the President Reagan's Task Force on Violent Crime;

Established policy guidelines for organizing and participating in arson task forces in major cities experiencing serious arson problems, such as Chicago, Boston, New York, and Los Angeles. These task forces became institutionalized, coordinating investigating activities and sharing intelligence with U.S. Attorneys, Strike Force Attorneys, State and local prosecutors;

Designed and implemented National Response Teams (NRT's) available on request to State and local authorities. Provided executive oversight of the development of an advanced arson-for-profit course directed at improving the training of State and local law enforcement and fire service personnel;

I have practiced law as a sole practitioner in the District of Columbia since retiring from BATF in 1984. I have represented approximately 500 clients in criminal firearms cases, other criminal cases; administrative and civil matters involving firearms importing, manufacturing, or dealing; matters involving administrative rulings; and criminal appeals.

I am a member of the Bars of the District of Columbia and Illinois; the National Association of Criminal Defense Lawyers (NACDL) and the National Association of Treasury Agents (NATA). I am a life member of the National Rifle Association (NRA) International Association of Chiefs of Police (IACP). I served for ten years on the IACP's Organized Crime Committee and for two years as Deputy Chairman of its Firearms and Explosives Committee.

I received a Bachelor of Arts Degree in History and Political Science from the University of Miami, Coral Gables, Florida and my Juris Doctor Degree from Northern Illinois University School of Law. I did advanced studies at the Bernard Baruch School of Public Administration, City College of New York.

I received the following Honors and Awards in addition to the Meritorious Service Award discussed above: The Office of the Secretary of the Treasury Honor Award; the Distinguished Civilian Vietnam Service Award; the Medal of Honor for Civilian Service, Class I (presented by the Government of South Vietnam for service during the 1968 Tet Offensive); and the Medal of Honor for Civilian Service, Class II (presented by the Government of South Vietnam for service during the 1966 village/hamlet elections).

I participated with the IACP Organized Crime Committee in the 1974 publication, "The Police Executive's Organized Crime Desk Book" and authored the article, "The Use of National Response Teams in Arson for Profit Investigations," which appeared in the January, 1982 FBI Journal.

I am not an occurrence witness. I have no first hand knowledge of the events at the Branch Davidian Compound. I have not reviewed any documents or other materials other than those in the public domain. I offer myself to the Subcommittee as an expert witness, or, to put it more precisely, an opinion witness on law enforcement policies and procedures.

I have personally planned, executed and participated in hundreds of searches and arrests both with and without warrants, while operating within the general procedural guidelines of the Department of the Treasury. I have reviewed and approved thousands of affidavits and raid plans for warrants predicated on violations of the

federal firearms laws. I have reviewed the after action reports of several thousand searches, seizures and arrests. Generally, the review process involves verification of probable cause, compliance with Federal Rules of Criminal Procedure, Treasury Department Policy and Directives, and finally the role of common sense; i.e., the safety of the agents, the safety of the objects of the search or seizure and the safety of innocent bystanders. In the course of my career, I have participated in the formulation of most BATF law enforcement policy and the development of all BATF procedures relating to undercover work, confidential informers, planning and executing search and arrest warrants.

I have not been invited here to eulogize the four young men who lost their lives in the assault on the Branch Davidian Compound. That should be done. Likewise, I will not get to praise the work of the countless courageous and dedicated professional men and women in BATF although that would be reason enough for my appearance. With few notable exceptions, the Special Agents of BATF who preceded me on the job, those with whom I worked and those who followed me have distinguished themselves in an honorable profession and in doing so have honored the Department of the Treasury. Rather than heaping abuse on the Special Agent, the nation should be considering a ticker tape parade for them just because they do what they are called upon to do on a daily basis. If abuse is to be heaped, let it be heaped on those who deserve it—on those entrusted with the management and direction of BATF. It is shameful that so many fine men and women have been villainized by the acts of so few. Theirs, the job of the Special Agent, is a thankless one. They came on the job to do only what this legislative body directed them to do; that is to investigate real crimes and to arrest and prosecute violent criminals. They joined a poorly managed agency with a confused sense of purpose. In the enforcement of the federal firearms laws, the average Special Agent works long and hard hours at irregular and unscheduled times and risk of life daily in penetrating the criminal activities of the most violent of violent criminals. He or she is placed in harm's way each time a search or an arrest is made in unstable environments and in dangerous situations. The activities described take place daily and routinely and are accomplished without notice. When BATF's resources are focused on violent crime and violent criminals, the federal firearms laws work as Congress intended them to work, supporting but not supplanting the authority of state and local law enforcement officials to combat violent crime. For that to get done, there must be a clear sense of the agency's mission, clearly defined policies and understandable directives and procedures. That is not what is happening and that is what has caused the mounting evidence of a deeply troubled agency.

I am ready to answer any questions to aid in understanding the decisions within and without BATF underlying the plans for dynamic entry of the Branch Davidian Compound or other issues before the Subcommittee.

Mr. MCCOLLUM. Mr. Zeliff for 5 minutes.

Mr. ZELIFF. I yield to Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

I would like to say first that it could be assumed—and it turned out to be entirely correct—that testimony of child abuse by a young girl would get headlines in the newspaper over the fact that the Alcohol, Tobacco and Firearms Department could not put the right United States Code statute number on the arrest warrant in the David Koresh case. Although that could be assumed to be the headline, I think the relevance to this hearing about the fact that a Government agent does not know the United States Code under which he is proposing to arrest people is far more significant. And I think that the idea that any mistakes in the raid occurred as a result of the haste to liberate children from this compound when the arrest warrant and search warrant never mentioned a child abuse violation, only a firearms violation, is in my mind a last-minute invention to cover certain backslides in Government.

Now, I want to ask the panel, going back to the military, if civilian law enforcement went to the military, Federal or National Guard, and said that they needed help because of a drug connection in a criminal case, would that lend help in getting that aid from the military? Would anyone care to respond on that? I believe

the answer is yes, but I would ask you, Mr. Coonce, you are with DEA. Would I be correct about that?

Mr. COONCE. Yes, sir. I personally have never used the military, sir.

Mr. SCHIFF. I do not know if your microphone is on, sir.

**STATEMENT OF JOHN COONCE, TACTICAL EXPERT, DRUG ENFORCEMENT ADMINISTRATION**

Mr. COONCE. I personally have never used the military.

Mr. SCHIFF. But you do know the military is active in antidrug efforts?

Mr. COONCE. Yes, sir, I do.

Mr. SCHIFF. And you do know that civilian law enforcement has gone to the military and asked for assistance in antidrug efforts?

Mr. COONCE. Yes, sir, I do.

Mr. SCHIFF. Now, if civilian law enforcement goes to the military and represents that a case they are working on has a significant drug connection, would you expect that information to be true?

Mr. COONCE. Yes, sir, I would.

Mr. SCHIFF. And would it be a serious matter if it was not true?

Mr. COONCE. I would personally think it would be a serious matter.

Mr. SCHIFF. Let me ask, in the cases that you know of where civilian law enforcement has asked the military for assistance in drug cases, has the following arrest warrant or search warrant normally then been for violation of drug laws?

Mr. COONCE. My only familiarity with the military in conjunction with civilian, particularly the Drug Enforcement Administration, has been in the marijuana eradication program in Oklahoma, and certainly it has resulted in indictments and trials.

Mr. SCHIFF. For what charge?

Mr. COONCE. For violation of Federal narcotic laws, cultivation.

Mr. SCHIFF. But not—pardon?

Mr. COONCE. Cultivation of marijuana.

Mr. SCHIFF. So from the experience you have had, when civilian law enforcement went to the military to ask for assistance in fighting a violation of the drug laws, the result was an indictment for violation of drug crimes?

Mr. COONCE. In the majority of instances, but that is not to say that you could not have any other violations of Federal law or State law.

Mr. SCHIFF. In addition to the drug laws?

Mr. COONCE. That is correct, sir.

Mr. SCHIFF. Do you know of any other case where the military was asked for assistance in fighting a violation of drug laws that the resulting case was not related to the drug laws, at least in part?

Mr. COONCE. Sir, I do not know. All I can relate to you is my experiences in Oklahoma.

Mr. SCHIFF. I understand.

I am going to turn for the balance of this time—and I do not know how far I will get in the time, but I am going to turn now generally to the raid at Waco. You have all been put together as an outside panel of experts who have worked in law enforcement



but who were not participants in this particular incident. And I would like to ask an overview, quickly: Was it well planned? Was it not well planned? And what would you have done differently?

I will begin with you, Mr. Ishimoto, if I may, from my home town. And if we run out of time, when I get my own 5 minutes, we will come back.

**STATEMENT OF WADE ISHIMOTO, TECHNICAL MANAGER,  
SANDIA NATIONAL LABORATORIES**

Mr. ISHIMOTO. Thank you, Mr. Schiff. I want to emphasize that there were six tactical experts brought in as consultants for the Treasury review in 1993, and we were allowed access to any bit of information that we so requested. And one of my colleagues was George Morrison to my left. As we did our interviews, then it was very obvious to us that the raid, in fact, did fail. So, in hindsight, it would have been the easiest thing to have said the plan was absolutely badly done.

However, in fairness, then, I turned back to some former training that I had and looked at nine very proven principles of different kinds of operations, in particular those that require the use of force. And I thought that the ATF plan had a reasonable chance of success based on those nine principles.

In fact, of those nine principles, there was only one, which I will call the economy of force, that—

Mr. SCHIFF. I am out of time, so I have to ask for a very brief response here. I am sorry. I will try to get back to you. What would you have done differently, one or two things you would have done differently, if anything?

Mr. ISHIMOTO. What I would have done differently would have been to look at critical success factors and to gauge my forward observers and intelligence personnel to report on that prior to proceeding.

Mr. SCHIFF. Mr. Chairman, I yield back.

Mr. MCCOLLUM. Thank you very much.

Mrs. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman.

Just for the record, it is my understanding that there are two here at the witness table who are the only ones that actually have either reviewed it or somehow been involved in that. Is that correct? Mr. Bassett. Mr. Coonce. I believe Mr. Morrison and Mr. Ishimoto were actually part of the review team, and, Mr. Sanders, could you tell me?

Mr. ISHIMOTO. Yes, that is correct.

Mr. BASSETT. I was not part of the review team for Treasury, no.

Mrs. THURMAN. OK. So Mr. Ishimoto and Mr. Morrison were the two that actually have reviewed the information.

Mr. Ishimoto and Mr. Morrison, maybe together give me an idea of the kinds of steps you took in doing the review. Was it thorough? Did you have access to what you believed was all the information? Did you get to take testimony? Did you get to review information that has been brought up here in the last 2 days of things that maybe other people feel like they did not get a chance to see? Do you feel like you have completed a thorough report here?

Mr. MORRISON. I would comment that our information was developed over a period of several months and is contained in the Treasury Department's report.

Mrs. THURMAN. Right.

**STATEMENT OF GEORGE MORRISON, FORMER CHIEF, METRO TACTICAL DIVISION, LOS ANGELES POLICE DEPARTMENT**

Mr. MORRISON. I think in the interest of your time here, that information pretty well explains and would cover quite more than 5 minutes of testimony.

At no time did I find any resistance to providing information. Some information was not available either because there was not a document form for it or it was part of the ongoing internal investigation as to conflicting statements by witnesses, Treasury Department employees.

I referenced that information in my report that is contained in the overall text. But I found that the investigative process was open, was responsive. One of the first issues that was raised was examination of the actual warrant application itself to determine if the plan was developed off the information contained in the warrant and if the information in the warrant was consistent with case management and intelligence that had been acquired during the initial process.

Mrs. THURMAN. And from that record, did you find that to be true?

Mr. MORRISON. I found that there were flaws in the case management process and in the intelligence management process.

Mrs. THURMAN. Mr. Ishimoto, would you like to comment?

Mr. ISHIMOTO. Are there some specifics, Mrs. Thurman, that I can comment on? I addressed Mr. Schiff's comments by saying that we had total access to any bit of information that we requested, and the Treasury officials that were conducting the review were very cooperative along those lines.

Mrs. THURMAN. Did you find any conspiracy or malicious—

Mr. ISHIMOTO. I found no conspiracy in my review. I found perhaps some inexperience on some people's parts, but no criminal negligence.

Mrs. THURMAN. In the review, I believe you gave some recommendations on how we might have done better; is that correct?

Mr. ISHIMOTO. Yes, and that was what we were specifically asked to look at, to recommend lessons learned in the aftermath of this failure to preclude that from happening again.

Mrs. THURMAN. And I believe that in many of our opening statements here yesterday that was one of the things that we are trying to get at: How can we ever prevent this from happening again?

Maybe both of you could, expand on some of the things that you saw that you believe we might—examine or maybe what actions departments or agencies should take that would give us an idea of what you believe we could be doing here.

Mr. MORRISON. Once again, I would refer to the content of the report. We had a chance to take quite a bit of time to develop that, but I think primarily it is a matter of expansion of roles. I believe that from my practical experience in the Los Angeles area, working closely with ATF, and my review of the Waco incident, that the role

of the ATF has expanded rapidly in the last several years. The complexity of their operations has expanded. And in many cases, the management review and control has not expanded accordingly.

I think that falls toward training, toward internal management audit, toward reorganization to the extent of having inspection and control processes. And each of the six experts—quote, “experts”—took different areas. I took the one of the management approach and the command and control aspect.

Mrs. THURMAN. Thank you.

Mr. MCCOLLUM. Mrs. Thurman, your time has expired.

Mr. Hyde, you have just come in. Do you wish the time, or do you wish to let me pass over you at this point?

Mr. HYDE. You can pass over me.

Mr. MCCOLLUM. Mr. Schiff—

Mr. HYDE. I understand that if I take my time, I can yield to Mr. Schiff.

Mr. MCCOLLUM. Yes, you may.

Mr. HYDE. Well, I am happy to do so.

Mr. MCCOLLUM. Very well. Mr. Schiff, you are recognized on Mr. Hyde's time for 5 minutes.

Mr. SCHIFF. I want to say to the panel you have heard our change in procedures, and each speaker has only 5 minutes. With that in mind, I am going to ask four of you the question I asked Mr. Ishimoto and ask for a brief response, beginning with Mr. Sanders. I would like to ask this question:

Would you have done anything different in the planning of this raid that the Alcohol, Tobacco and Firearms did at Waco if you were doing it, if any changes? Mr. Sanders, would you answer that question, please?

Mr. SANDERS. If my purpose was to execute an arrest warrant and a search warrant, I would not have done it in that way.

Mr. SCHIFF. What would you have done differently?

Mr. SANDERS. I really do not know, but I would not have mounted an assault involving military-equipped people to attack, absolutely assault, a compound containing more than a hundred men, women, and children.

Mr. SCHIFF. Mr. Morrison.

Mr. MORRISON. I would have had a more active management review process of the information that was developed leading to the decision to conduct a high-risk search warrant entry.

Mr. SCHIFF. Mr. Coonce?

Mr. COONCE. Mr. Schiff, my field of expertise is in the clandestine manufacture of controlled substance and not in raid planning. So I do not think I could honestly respond to your question.

Mr. SCHIFF. Well, let me follow up on that, Mr. Coonce. Are you aware that it has been suggested that the military was told that surveillance and other kinds of training assistance was needed because of a necessity to locate a drug methamphetamine lab in this situation?

Mr. COONCE. Only through the media, sir.

Mr. SCHIFF. Well, to the best of your knowledge and your Agency's knowledge, did the Department of Alcohol, Tobacco and Firearms ever contact DEA and say we need some assistance, we are dealing with a drug lab here?

Mr. COONCE. Sir, I do not know the answer to that question.

Mr. SCHIFF. I wonder if you could try to find that out and give that answer in some form to the chairman of the committee as to whether ATF contacted DEA and said you are the drug experts, we have a drug lab problem, what should we do. I wonder if you would follow up as best you could.

Mr. COONCE. I certainly will do that, sir.

Mr. SCHIFF. I thank you, Mr. Coonce.

Mr. Bassett, please, same question.

**STATEMENT OF DONALD BASSETT, FORMER CRISIS MANAGEMENT SPECIALIST, FEDERAL BUREAU OF INVESTIGATION**

Mr. BASSETT. Mr. Schiff, the question is difficult to answer with a simple answer because I view the problems with the raid as being multidimensional, and I would like to qualify my comments on the raid specifically by noting that my knowledge of the raid is based upon my reading of relevant sections of the report which my colleagues contributed to under the Treasury Department review.

If I were to pinpoint a major area of concern, it would be intelligence and the rigor with which the intelligence was gathered and appreciated by the raid planners.

Mr. SCHIFF. Could you expand on that for a minute? What do you mean concern about the intelligence? What did you see as you reviewed it?

Mr. BASSETT. Well, my concern was that the raid was based largely on expectations of surprise, which in turn was based on intelligence that, in hindsight, was not adequate and overreliance was perhaps placed on intelligence which did not have a firm basis in fact.

Mr. SCHIFF. Mr. Sanders, let me go back to you, if I may. You said that you would not have put together a military-type operation in the first place. Was it your understanding that this was a military type of operation?

Mr. SANDERS. I only know what I saw and what I have read in the public domain, and it was an assault.

Mr. SCHIFF. And why would you not have done it that way?

Mr. SANDERS. Well, the special agents of ATF execute search warrants and arrest warrants every day, and I would have gone to them and told them to figure out a way to execute this arrest warrant and execute this search warrant.

Mr. SCHIFF. Mr. Morrison, you said that you would have looked for more active management review. Would you be kind enough to explain what you mean about that?

Mr. MORRISON. Yes. Again, this is contained in my report, but the areas of the intelligence case management and in the investigative case management causing closure of points that were raised at various stages of the investigation, causing closure of intelligence information that was offered but not analyzed and given credibility, I think that those areas were very critical in the decision to go ahead with the tactical raid. I think that the tactical planners, to make it very brief, the tactical planners were denied critical information or at least appropriate verification of information in the process of preparing a raid. I believe that that information was inadvertently denied them. There was not a deliberate coverup.

Mr. SCHIFF. My time has expired. Thank you.

Mr. MCCOLLUM. Thank you, Mr. Schiff.

Mr. Scott, you are recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

I want to follow up a little bit on the questioning of the gentle lady from Florida, because I think we ought to focus on what we can do to avoid this outcome in the future. Yesterday, in response to several questions I asked, one of the witnesses indicated that if police misconduct is an allegation, the sole tool we have to deal with that is the exclusionary rule. There is virtually no other sanction that has been useful in dealing with police misconduct.

In this case, we have a situation where we have a person that, I think, could reasonably be predicted or evaluated to be unpredictable, and the question is how you execute a search warrant in a situation like that without risking the lives of those who are trying to serve the warrant and without risking the lives of innocent bystanders. And we showed in this situation from start to finish, we showed two ways how not to do it.

What factors would you consider if you had a similar situation? Is there any way to execute the warrant, knowing what you know now, on a similar person who is fully armed and we are having other groups that are developing the amount of armament? Is there any way you can execute an arrest warrant and a search warrant without risking the lives of officers and innocent bystanders, knowing what you know now? Mr. Ishimoto.

Mr. ISHIMOTO. Mr. Scott, I find that to be very problematic because of the fact that what we know today was not necessarily known as fact during the raid planning and actual execution. It is simple to say that perhaps attempts could have been made to arrest Vernon Wayne Howell or David Koresh off of the compound. But the intelligence, as Mr. Bassett referred to, was not sufficient at that time, and certainly we can be critical of ATF in terms of their intelligence effort. But the fact is they did not know enough.

Mr. SCOTT. Well, let me stop you there. It had not been coordinated because, apparently, somebody on our side had the information but it had not been shared with the other agencies. Is that true?

Mr. ISHIMOTO. No, sir. In my review, it was very evident that they did not have the information that Koresh was—

Mr. SCOTT. No agency of the Federal Government had the information?

Mr. ISHIMOTO. That Koresh was leaving the site on a frequent basis?

Mr. SCOTT. Right.

Mr. ISHIMOTO. Not to the best of my knowledge and during our review.

Mr. SCOTT. What other types of entry—with the various forms of entry, are there some that have a lower risk of loss of life than others?

Mr. ISHIMOTO. The dynamic entry has been proven time and time again in law enforcement use in this country and internationally to have a lesser lethality in terms of loss of life, both on the part of the suspect as well as on law enforcement officials serving that warrant.

Mr. SCOTT. And what are the essential elements of the dynamic entry which reduce the likelihood of lethality?

Mr. ISHIMOTO. Amongst those are surprise and speed and proper massing of the number of forces to overwhelm the people and to basically intimidate them so they do not resist.

Mr. SCOTT. Was there any way to bring these three factors into play in this situation?

Mr. ISHIMOTO. Yes, and I believe ATF attempted to do that. They lost the element of surprise, perhaps without their full knowledge.

Mr. SCOTT. And is there any way—when you have this, ought you not have an alternative plan when you find halfway through that things are not going right, that you can retreat before you get into trouble?

Mr. ISHIMOTO. They had those plans. Frankly, they could have been better developed. But I believe the reason for them not being able to develop those plans better was their inexperience.

Mr. SCOTT. And so it is your testimony that, knowing what we know now, we would perform better in a similar situation?

Mr. ISHIMOTO. Yes, and I am aware that ATF has attempted to change their crisis management training and their special response team training.

Mr. MCCOLLUM. Mr. Scott, your time is up.

At this time I yield to Mr. Schiff 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman. I yield my 5 minutes to Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Schiff.

Mr. Morrison, reading your analysis of the raid—and I am going to quote from your report—“The absence of management review led to a serious breach of integrity, falsification of documents.” And you go on to say in the next page, “Once again, this component of planning points to ineffective management and command and control. The absence of accountability charting throughout the BATF resulted in errors, omissions, and failures in the investigation, intelligence, approval, planning, and incident management of the Waco incident.”

Do you stand by your report, Mr. Morrison?

Mr. MORRISON. Yes, that is my opinion and my belief.

Ms. ROS-LEHTINEN. Excuse me?

Mr. MORRISON. That was my opinion and belief based on the information I had available.

Ms. ROS-LEHTINEN. That was your opinion. And do you still believe that today?

Mr. MORRISON. Yes.

Ms. ROS-LEHTINEN. Part of the criticism of the plan, in addition to what was discussed, was its lack of abort conditions. Who was ultimately responsible for this shortcoming, and what does it say about the planning of this operation?

Mr. MORRISON. I believe that the abort procedure was in there but was not followed. There were a number of what I termed, I believe, in my report as “red flag” indications that would have prompted the person in charge to have aborted that mission. One was losing the element of surprise. I think that was a critical issue. I do not believe that there was a full flow of information to the tactical team leaders who were committed to the raid as to the condi-

tions that were developing during the last hour prior to the raid. In that area, the abort procedure had to have a very clean chain of command, who was in charge, at what point was information provided, and who was going to make that decision. The——

Ms. ROS-LEHTINEN. And what does it say, then, about the planning of this operation if that was not——

Mr. MORRISON. If I may continue on that one point, I think what caused that problem and that confusion was the lack of experience in this type of a very large-scale raid, and the absence of a clear-cut chain of command and tactical procedure for command.

Ms. ROS-LEHTINEN. And related to this chain of command is the unity of command. Is that not one of the guiding principles of these operations? Why do you think it is important in this sort of operation to have one person in charge?

Mr. MORRISON. I believe I stated that in my report. It is clear that someone has to be the one taking the responsible role, and that person has to have access to all information, from the actual tactical team leaders making the entry, the forward observation posts, any other type of observation or intelligence gathering that is going on at the time. That all has to be part of the planning, the game plan, and clearly communicated to all participants in the raid—who makes what decision. The raid could have been called off by one of the tactical team leaders under certain conditions.

There are various places where those gates can come up to abort based on information present. That has to be clearly developed within the plan as at what point does what supervisor, team leader, tactical commander, whatever terminology is used, have a responsibility to make an observation and to either commit to a green light, going ahead, or aborting.

Ms. ROS-LEHTINEN. And in this incident, who had the power to abort the attack when surprise was lost?

Mr. MORRISON. I believe that that was somewhat confused. I think the power existed within about three levels. I do not think that the communications system was there nor the organizational management system there to clearly determine that. That was one of the things we wrestled with.

Ms. ROS-LEHTINEN. Thank you.

As a Representative from Florida, I am very concerned about the misuse of funding authority that was designed to aid the antidrug efforts. And following up on Mr. Schiff's questions, Mr. Ishimoto, you stated in your report that BATF believed that a drug nexus was needed to obtain this military support, and you later stated that this drug nexus was tenuous at best. Were you provided access to information that the drug nexus was false? And when you wrote your report, if you did have the information, why was it not addressed in your report? And if you did not have it, are you now aware of that fact?

Mr. ISHIMOTO. Do we still have time?

Mr. MCCOLLUM. Yes, you may answer the question. She has asked it. It will be her last question, and your response will be the last thing she gets.

Mr. ISHIMOTO. Thank you, Mr. McCollum.

Ms. ROS-LEHTINEN. Make it good, Mr. Ishimoto.

Mr. ISHIMOTO. What I saw in my review was that ATF had a basis for investigating a drug nexus. It was turning out to be very weak, in my opinion. I believe they were then reliant upon their military adviser at ATF headquarters, their adviser in JTF 6, Colonel Browning out of the Pentagon, and most importantly, a person out of the Texas Governor's office who was a federally funded employee and who I believe encouraged ATF to proceed with non-reimbursable use of the military using a drug nexus as the criteria.

Mr. MCCOLLUM. Thank you very much, Ms. Ros-Lehtinen.

Mr. Lantos.

Mr. LANTOS. Thank you very much, Mr. Chairman.

Taking my clue from Mr. Zeliff that this is a morning of understatement, since he called Koresh not a nice person, I will say this was not a perfect operation. But I would like to move to an entirely different arena.

It seems to me that we are living in the past when we draw very sharp lines of distinction between what are military threats and what are civilian threats and the appropriate use of the military. I just want to mention a handful of items. I would be grateful for a response.

In Jonestown, with a violent sect, 900 Americans lost their lives. Nine hundred Americans lost their lives.

In Tokyo, given the activities of a violent sect, Aum Shinrikyo, which pumped poison gas into the subway system, we had death and we had large numbers of injuries.

At the World Trade Center, a violent sect created tremendous human and physical damage.

Here, while some are concerned with the appropriateness of the warrants, I am concerned about the fundamental human rights violations and outrages that were involving children, 10-year-old children.

I wonder if we are not repeating the tragic example in the Second World War of the guns of Singapore, which were all aimed at the water but the enemy came from behind over land.

This criticism that the military was involved and focusing on whether it is involved in a reimbursable or nonreimbursable fashion at a time when we are spending \$300 billion to protect the lives of American citizens, I think is nothing short of absurd. Of course, we need to involve the military when the lives of American citizens and their torture and their rape is at stake.

I would like to ask the whole panel, beginning with Mr. Ishimoto, whether you think there is not a pressing need to recognize that we are living in an era of nuclear weapons, biological and chemical weapons, means of mass destruction which can be obtained by violent sects here or abroad. And isn't it necessary, therefore, to integrate our military on a routine basis in fighting these threats?

Mr. ISHIMOTO. Sir, you pose a very crucial issue, and it is my belief that we must strike a very distinct balance between the use of the military in outright civil law enforcement, which would be a violation of posse comitatus.

Mr. LANTOS. Of course.

Mr. ISHIMOTO. And the use of the military in terms of assisting law enforcement or Federal Emergency Management Agency officials in response to acts that—



Mr. LANTOS. That distinction is a legitimate but obvious distinction. You do not want to use the military with respect to traffic violations. But what happens if potentially hundreds of American citizens, as was the case in Jonestown, Guyana, are facing murder, mass murder? There was no way of dealing with it on a civilian basis. There is no way of dealing with a Japanese sect which pumps poison gas into their subway system. Go ahead, sir.

Mr. ISHIMOTO. I would agree, sir, and that is a legitimate use of the military under those circumstances. The military, to do a good job, needs to be involved in some planning activities prior to that, and that needs to be reviewed in terms of appropriations actions and other planning.

Mr. LANTOS. Does any other member of the panel wish to comment?

Mr. BASSETT. I would like to comment, Mr. Lantos.

First, I would like to point out that there are legitimate uses for military support in civilian law enforcement operations, and there are also precedents for that support, without involving narcotics. I will cite two examples very quickly: in 1973, the siege at Wounded Knee; in 1975, the murder of two FBI agents on the Pine Ridge Indian Reservation.

Mr. LANTOS. Right.

Mr. BASSETT. We used military equipment, but it was operated by FBI agent operators, and that is where the distinction was drawn, in order to avoid violation of posse comitatus.

I think that there are certain categories, potentials for crime and terrorism in this country that portend such grievous consequences that we do have to consider the use of the military, partly because of their specialized assets, for instance, in chemical and biological warfare.

Mr. LANTOS. Exactly.

Mr. BASSETT. And also because of their resources such as armor in certain situations. I think we have to be very cautious about casually accepting military units as police units, however.

Mr. LANTOS. Absolutely. Any other comment?

Mr. MCCOLLUM. Mr. Lantos, your time is up at this point.

Mr. LANTOS. Will you allow the witnesses to respond to the question, Mr. Chairman?

Mr. MCCOLLUM. If there is a response, yes.

Mr. LANTOS. If they choose to.

Mr. MORRISON. I would just like to say that the civilian law enforcement works extensively with the military in mitigation for natural disasters or local emergencies and that there is ongoing training, logistics, ability to obtain logistics. In the case of the scenario you developed for nuclear, biological, or chemical incidents of terrorism or extortion or threats along that line, the FBI is clearly the lead agency and has established some very effective task forces in major metropolitan areas and bringing in the escalation where the military equipment is needed. I think that those programs are well defined within this country. I think the expanded role of the FBI has been well communicated in the major local law enforcement arenas. And I think that if this committee wants to look at that as a side issue, that is another one, but that is a full study in and of itself.

Mr. MCCOLLUM. Any other witness responses? Mr. Sanders.

Mr. SANDERS. Mr. Lantos, with respect to the question should the military become involved in civilian law enforcement, my answer to that would be no. With the exception of social work and hazardous situations where the military can provide assistance, yes. But in terms of involvement in civilian law enforcement, until the domestic tranquility of this country reaches a level where the military is required, I would be very much opposed to it.

Mr. MCCOLLUM. Any other responses? Mr. Ishimoto.

Mr. ISHIMOTO. Yes, sir. I would respectfully disagree with my cohort. The military had to be involved in the Detroit riots, in Little Rock, AR, for enforcement of certain civil rights laws, and these were national emergencies which far exceeded the capability of any Federal or local law enforcement entity to undertake.

Mr. MCCOLLUM. Thank you. Thank you, panel, and thank you, Mr. Lantos.

Mr. LANTOS. Thank you very much.

Mr. MCCOLLUM. Ms. Ros-Lehtinen, you are recognized for 5 minutes.

Ms. ROS-LEHTINEN. Thank you.

Mr. Ishimoto, following up on our conversation about the drug nexus, we have in our committee notes from someone who appears to have worked or continues to work with ATF, and this was just given to us in a loose form. Let me read to you a few of the sentences here. It seems to be a memo from someone.

"Use of the National Guard was a scam. In my opinion, to my knowledge, there was never any mention of a meth lab being on the compound. This was a scam initiated by the Bureau's headquarters again, in my opinion, to obtain the additional resources of the National Guard, air support assistance, et cetera. In addition, it would mean additional funding for ATF, et cetera, in the years to come."

Could you comment on this drug nexus connection and whether you think that at the time there was some discussion about the false connection?

Mr. ISHIMOTO. Ma'am, in our review I could not find any deliberate attempt or any attempt at all to lie on ATF's part about a drug nexus.

Ms. ROS-LEHTINEN. Are you aware now that that drug connection was false? Are you aware of that now?

Mr. ISHIMOTO. Yes.

Ms. ROS-LEHTINEN. You are aware.

Mr. ISHIMOTO. But, initially, they had evidence from an interview of Marc Breault that, in fact, there was a meth lab there in 1987.

Ms. ROS-LEHTINEN. And so they were using false, you know, outdated information from 5 years before. Is that why in your report you do not talk about that false drug nexus?

Mr. ISHIMOTO. They were using outdated information, and then, as I stated previously, this member of the Texas Governor's office, I believe, was somewhat overzealous in proposing that ATF did, in fact, still have evidence that a meth lab existed on the compound when the National Guard did an overflight using some very unsophisticated, forward-looking infrared devices, and this individual by

the name of Enney declared to ATF that that was sufficient, in fact, it was a meth lab.

Ms. ROS-LEHTINEN. Are you talking about an individual in the Texas Governor's office?

Mr. ISHIMOTO. Yes.

Ms. ROS-LEHTINEN. Who was this individual?

Mr. ISHIMOTO. Mr. William Enney.

Ms. ROS-LEHTINEN. Mr. William?

Mr. ISHIMOTO. Enney.

Ms. ROS-LEHTINEN. And what did Mr. Enney say?

Mr. ISHIMOTO. He indicated to ATF that that was sufficient for him to declare that a meth lab existed there and that——

Ms. ROS-LEHTINEN. The information from 5 years before?

Mr. ISHIMOTO. No. This was an overflight done in early 1993 where they used forward-looking infrared to detect the so-called hot spot on the compound. That hot spot could have come from any number of heat sources, but Mr. Enney chose to interpret that as being indicative——

Ms. ROS-LEHTINEN. As a meth lab.

Mr. ISHIMOTO. Of a meth lab.

Ms. ROS-LEHTINEN. And is that individual's name in your report or that nexus? I could not find it in your report.

Mr. ISHIMOTO. His name does not appear in my report for a variety of reasons.

Ms. ROS-LEHTINEN. Among those?

Mr. ISHIMOTO. I was concerned over liability issues.

Ms. ROS-LEHTINEN. Good luck to you in that.

Continuing in your report talking about the failure to observe operational security and secrecy, how would you evaluate that failure when we have reports that ATF agents walked around Waco wearing ATF jackets, hats, there was an 80-vehicle convoy which stretched for more than a mile long, included many vehicles which had telltale signs of Government vehicles from Fort Hood to Waco, that Koresh may have been tipped off indirectly by a reporter? Could you comment on the operational security and secrecy factor of this operation?

Mr. ISHIMOTO. Yes, ma'am, I certainly believed in hindsight that they could have planned it better. However, I must emphasize that operations security is always a tradeoff at best. And what really caused, in my estimation, the raid to fail was the fact that the ambulance service dispatcher revealed, with intention, to her boyfriend, a TV news cameraman, as to the fact that ATF and the National Guard were planning to hit the compound.

Ms. ROS-LEHTINEN. Is it your estimation that the agents, those in command, lacked the proper training for this size operation?

Mr. ISHIMOTO. Yes, ma'am. Again, in hindsight, and I believe they are taking steps to actively improve their training.

Ms. ROS-LEHTINEN. Thank you.

Mr. MCCOLLUM. Ms. Ros-Lehtinen, your time is up.

Mr. Conyers, if you would like, you are recognized for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

I would like to yield initially to the gentleman from New York, Mr. Schumer.

Mr. SCHUMER. I thank the gentleman. I would just like to make one point that relates to what we had said earlier, and I appreciate the panel's indulgence. We had a discussion—you were here—for documents not being produced, being produced, both sides sort of revealing everything.

Well, I have been informed now that the Department of Justice will turn over all documents that have been requested by the majority, including the documents about Webb Hubbell. There are no missing documents. They are making good on all the requests, the requests on July 12 by Mr. Clinger, the requests on July 16 of Mr. Charles, and there are no gaps. And the only point I would make is if we want everything to come out, bringing everything in the fullest light, nobody should hold back anything, and we still very strongly feel that we would like to be interviewing the witnesses related to the NRA and related to those issues.

I yield back the rest of the time to Mr. Conyers, just making the final point that, again, what is good for the goose is good for the gander. Big cries on the other side, White House, reveal all documents, bring everything forward. They did. We would make the same pitch to the majority.

Mr. CONYERS. Well, it is our hope that this information will lead us to a conclusion rapidly around the question of NRA participation in the investigation. We hope that this issue can be as efficiently concluded as the matter that you brought to our attention.

I do not have questions for this panel because most of you were reviewers, at best, after the fact on the Waco tragedy, and others of you have jobs that are in agencies that touch on this. It seems to be important that we do acknowledge the fact that frequently the Bureau of Alcohol, Tobacco and Firearms coordinates with the Drug Enforcement Administration or with other parts of the Department of Justice or with the Department of the Treasury, and there is nothing unusual, depending on the subject matters and the activities that are the object of your investigations.

That is to say that sometimes there are guns involved, sometimes there are drugs involved, sometimes there may be immigration matters involved. So that the kind of coordination that occurred at Waco is really not unusual from the kind of activities that you normally engage in.

Is that a fair assumption of the relationships that went on between different law enforcement agencies in the Waco incident? Mr. Ishimoto, could you respond to that, please?

Mr. ISHIMOTO. Yes, sir. That is normal and perhaps one could criticize ATF for the need to increase the amount of coordination that was done. But they certainly did coordinate with a variety of Federal as well as local and State law enforcement agencies.

Mr. CONYERS. Are there any other comments about the kind of coordination and cooperation that frequently occurs? Mr. Coonce.

Mr. COONCE. Mr. Conyers, my relationship with ATF has always been very, very professional, and they accord themselves in that manner.

Mr. MORRISON. Yes, sir, my experience has been the same, and we bring in elements of the various agencies whenever necessary for expertise, whether it is ongoing case investigation. My experience in Los Angeles is that we have developed systems to ensure

that we are not conflicting with one another on investigations so that we do not expose undercover agents, for example, to jeopardy of a raid. We make sure that our agencies know which one is the lead agency. If we have a need to move faster on a case because of some new development, we go to the agency that had the initial investigation, whether it involves guns, drugs, and work out a compromise for moving up the timetable, for example, of arrest or search warrants.

That type of cooperation is extremely critical, and I would support Mr. Ishimoto's comment that if there was any error here, it may have been by not having greater cooperation or coordination in using the resources of the Customs.

Mr. CONYERS. Thank you very much.

Mr. MCCOLLUM. Thank you very much, Mr. Conyers. Your time is up.

Mr. Coble, you are recognized for 5 minutes.

Mr. COBLE. Mr. Chairman, I yield 5 minutes to the gentleman from New Hampshire, Chairman Zeliff.

Mr. ZELIFF. Thank you, my colleague.

Mr. Chairman, I would like to just refer my first question to Mr. Ishimoto. A document was given to you along the lines of questioning by Ms. Ros-Lehtinen, "Use of the National Guard was a scam. In my opinion, to my knowledge, there was never any mention of a meth lab being on the compound. This was a scam initiated by the Bureau's headquarters again, in my opinion, to obtain the additional resources of the National Guard, air support assistance, et cetera. In addition, it would means additional funding for ATF . . . in the years to come."

Your comment?

Mr. ISHIMOTO. Again, Mr. Zeliff, I would disagree with those comments. I saw no collusion on the part of ATF headquarters whatsoever. With response to your colleague's question previously, my indication came from an interview of Mr. Sarabyn who described the results of Mr. Enney's involvement at some time in approximately December and January where he pushed forward the fact that, in his, Enney's, belief, there was a meth lab there and that was sufficient to engender National Guard support.

Mr. ZELIFF. Thank you.

Mr. Coonce, you are familiar with a methamphetamine lab, and you have experience with DEA. You were involved with such labs in central Texas; is that correct?

Mr. COONCE. Yes; I have been.

Mr. ZELIFF. Can you quickly describe the top three dangers involved with drug enforcement of these labs?

Mr. COONCE. Somebody firing at you upon entry, the possibility of explosion or leakage with respect to the chemicals involved, and the safety of the individuals.

Mr. ZELIFF. So they are explosive in nature; they are also toxic.

Mr. COONCE. Yes, sir, they are.

Mr. ZELIFF. And is there a pretty strong stench or smell that goes with some of those chemicals, or not, if there is a lab existing?

Mr. COONCE. Sir, it depends on which formula you are using, but normally in a methamphetamine lab in that area of the country, you have to make another control substance prior to the manufac-

ture of methamphetamine which is called phenyl acetone, and that is very obnoxious, very odorous.

Mr. ZELIFF. So you would know pretty conclusively if there was a lab there, probably?

Mr. COONCE. Well, you have to combine the smell or the odors along with other probable cause that you develop during the course of the investigation.

Mr. ZELIFF. Tell me what special training is required for any enforcement official to be involved in a takedown of these kinds of labs.

Mr. COONCE. The entry team, Mr. Zeliff?

Mr. ZELIFF. Pardon?

Mr. COONCE. The entry team, sir?

Mr. ZELIFF. The entry team. If you are involved in a takedown of the lab.

Mr. COONCE. You have to be very knowledgeable about the processes involved so you can make a determination as to exactly what is going on within the lab when you get in there. You have to be familiar with the chemicals. You have to be OSHA certified.

Mr. ZELIFF. OK. Will the clerk pass out a document to all members of the panel marked No. 1? Just take a quick look at it. I want you to take a look at that. This is an operational order from DOD for military assistance to the ATF for the Branch Davidian raid. I am going to read you the quote in that document.

I quote, "Intelligence indicates an active methamphetamine lab and deliveries of the required chemicals to produce synthetic methamphetamine."

Mr. Coonce, does the DEA use FLIR heat-sensing devices to identify these labs?

Mr. COONCE. FLIR is one element of probable cause which would support other elements of probable cause that you establish during the course of your investigation.

Mr. ZELIFF. And would you read the part that is underlined that has been handed out to you, "Intelligence indicates an active . . .?"

Mr. COONCE. Sorry, I do not see anything that is underlined.

Mr. ZELIFF. OK. I will read it then. "Intelligence indicates an active methamphetamine lab and deliveries of the required chemicals to produce synthetic methamphetamine."

If someone thought that there was an active lab with precursor chemicals, what agency would be the lead agency in any law enforcement action in such a lab?

Mr. COONCE. Well, certainly we have a lot of expertise, Mr. Zeliff, but that is not to say that other State, local, or Federal law enforcement agencies could not effect the seizure of an operational methamphetamine lab.

Mr. ZELIFF. So DEA would not necessarily be called in on anything related to this kind of operation?

Mr. COONCE. Sometimes they are not notified, that is correct.

Mr. ZELIFF. Were they ever contacted by ATF to be involved in the Mount Carmel center take-down?

Mr. COONCE. Sir, I do not know the answer to that question.

Mr. ZELIFF. Would you be willing for the record to get that information for us?

Mr. COONCE. Yes, sir, I will.

Mr. ZELIFF. I will leave it at that. My time has run out.

Mr. MCCOLLUM. At this time I believe, Ms. Jackson Lee, you are next on the list and are recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Let me say to all the witnesses that I appreciate your appearance here, and if I miss the opportunity to ask any one of you questions, it is not because there is not an interest, although I might add in reading the report by the Treasury Department, I can basically say that to date there is no new information. However, I think it is important that we are in these proceedings because it is important for the American people to be able to be carried through this process and understand what happened and what did not happen.

Now, we are now into the area dealing with military involvement. The military involvement that we are talking about falls in two different areas. One, Mr. Ishimoto, if you would listen to me on this, dealt with the ATF not having to reimburse for military usage. And so the drug nexus was attempted, to develop a nexus so you would not have to be reimbursed. However, Customs, another Federal agency that is not in the military or not a military agency, had helicopters. So there were other options.

So I really think the key has to be, one, the acknowledgment that was in the report already that that nexus fell short. Let us acknowledge that. It fell short primarily because we started with the 1987 understanding that the previous god, if you will, Mr. Rodin, had a methamphetamine of sorts. That was the basis. And then not being able to trace where that particular equipment was, they began to develop, as I understand it, a basis by way of former drug users, just like you could have a former alcoholic maybe making bootleg wine in there. But, in any event, former drugs users, that was the beginning of the nexus.

My question to your, Mr. Ishimoto, is: One, did you already discover that in your review and was that not in the Treasury Department's report as a reviewer? Did you discover that as you were reviewing?

Mr. ISHIMOTO. Yes, ma'am. We discovered that as we reviewed the incident.

Ms. JACKSON LEE. As we proceed with that line of questioning, you indicated that this raid had a reasonable chance of success. It was, nevertheless, not well conceived. Can you give me briefly an explanation of that, please?

Mr. ISHIMOTO. I refer to my previous testimony in terms of why it had a chance to succeed in my mind, and it deals with the nine basic principles. What could have been done better would have been to expand the planning efforts to cover other contingencies and to establish their critical success factors and to task the forward observers with reporting normal activity at the compound rather than the questions that Mr. Sarabyn did ask of Agent Rodriguez, which were, "Do you see anyone in the windows" and "did you see them getting ready for us?"

Ms. JACKSON LEE. So that was a key, and it related to the element of surprise as well, I believe, that was very, very important.

Mr. ISHIMOTO. Yes, ma'am.

Ms. JACKSON LEE. Let me go back again to the drug nexus and that whole scenario that was reported again in the Treasury De-

partment's report, the question of using the Texas National Guard to do the hot spots or do the infrared, as I understand it, and then getting the analysis. Would you not add or would you not reinforce, which was in the report, again, that the difficulty was that there was a sort of speculative or kind of layman's review of those documents, even though we give credit to the Texas National Guard for having some expertise, and it did not ultimately go to a lab to determine whether those were actually suggestions of drug-making equipment? Is that my understanding? Do I have that correct?

Mr. ISHIMOTO. Yes, ma'am.

Ms. JACKSON LEE. So that certainly should be something that should be corrected if ever utilized, that there be a period where we do not just speculate and have the documents reviewed around a table of people that may not have total expertise, but that we have a final determination by those equipped to determine bottom line in order to make that determination?

Mr. ISHIMOTO. I very much agree with you.

Ms. JACKSON LEE. Would that be a correction that we would have?

There was some discussion yesterday about the equipment that the ATF used, and let me reinforce the tragedy of the loss of life. I do not think we can get away from that, and let me also reinforce that we should be here to unfold the story for the American people. But there was some suggestion of the gear and the equipment.

Being in law enforcement or involved in this arena, have you seen an increase in the kind of technology and weapons that criminals have had, meaning the massive machinery, the grenades, the automatic weapons? Would that then be a response or would a response be that law enforcement then has to enhance its technology, whether it be in terms of dress and fatigues and the type of footwear that was being worn? Could that be in response to the kind of equipment that those who were engaged in criminal activities might have?

Mr. ISHIMOTO. Yes, ma'am, that is certainly part of the response, and the other part of it is that, as people have looked at dynamic-entry tactics, a certain appearance assists in less use of lethality, if that makes any sense.

Ms. JACKSON LEE. Could you repeat that again? I am sorry. I know you are finishing your answer.

Mr. ISHIMOTO. By having a certain kind of appearance, in other words, wearing certain kinds of helmets and tactical vests, in black uniforms, then it intimidates a lot of people and causes them to use less lethal force in opposition to those making the raid.

Ms. JACKSON LEE. Thank you. I may have a chance to get back with you, Mr. Ishimoto. Thank you very much.

Mr. MCCOLLUM. Thank you, Ms. Jackson Lee.

At this point in time I think we are down to recognizing Mr. Buyer.

Mr. BUYER. Yes, Mr. Chairman I yield to the gentleman, Mr. Plain Talk, of North Carolina, my 5 minutes to Howard Coble.

Mr. COBLE. I thank the gentleman for yielding.

Mr. Chairman, the gentleman from Oklahoma correctly noted last night that some people are playing roles in this hearing, and I feel obliged to say that implications have swirled around this



hearing room indicating that those who are advocating the desirability of illuminating additional facts surrounding the raid are in some way sympathetic to Koresh. I think no one believes this, but it makes for provocative talk. And I want to say if this guy had approached me, not only would I not have signed on with him but I would have signed off with him. But that judgment, obviously, is not universally prevailing because we know some folks signed on with him.

Having said that, that will be for another day to get into more detail. I appreciate you all being here, gentlemen. Mr. Coonce, let me revisit what the chairman said to you earlier concerning the methamphetamine lab, either the presence of it or the lack of it.

Talk to me a little in more detail about the OSHA certification. Do you know whether or not any of the agents during that raid were, in fact, OSHA certified?

Mr. COONCE. No, sir, I do not.

Mr. COBLE. We are going to keep you busy doing homework, but I think that might well be information that we need to know. Can you obtain that information for us?

Mr. COONCE. I will do my best for you, sir.

Mr. COBLE. And if you can, Mr. Coonce, in a very brief manner, what constitutes OSHA certification?

Mr. COONCE. Basically, you have to go through a 2-week certification program dealing with the chemicals that are involved and the regulations as far as disposal and the hazards and the equipment utilized to identify those areas inside a clandestine drug laboratory.

Mr. COBLE. Mr. Coonce, have you seen the videotapes of the ATF raid on the compound?

Mr. COONCE. Very briefly, sir.

Mr. COBLE. You may not recall, but I was just wondering, having said what you just said earlier, if the agents that conducted the raid appeared to be taking the necessary precautions, that is to say, gloves and masks, that would normally be acceptable in taking down such a lab.

Mr. COONCE. Sir, I really could not comment or give you an honest answer because I was not there.

Mr. COBLE. OK. I thought perhaps if you had seen that and observed the videotape, that might put you in a position—OK.

Mr. Bassett, we have heard much talk about dynamic entry. That has been kicked around very prominently and frequently. This is a general question, but under what conditions is a dynamic entry appropriate?

Mr. BASSETT. Well, to begin with, I would agree with my colleague, Mr. Ishimoto, that dynamic tactics can be used to reduce risk upon entry into otherwise high-risk situations.

However, dynamic tactics are high-risk tactics. They are high risk not only in the sense of the situations in which they would be employed, but also the very training that people have to go through in order to gain competency in dynamic tactics involves risk in and of itself.

Dynamic tactics involve very rapid entry, fail-safe entry, rapid, continuous, forward movement, with a great deal of speed, the ability to fire on the move, which is a skill that takes time to learn

and also takes time to maintain it in terms of training. Dynamic tactics require people who are very well trained and who are very well prepared for their execution.

They were originally applied in this country for hostage rescue where there was compelling need to conduct tactical interventions in order to rescue people who were in danger of grievous bodily harm.

Mr. COBLE. It seems to me that—well, strike that. I will let you say what it seems to you. Would this be an optimal type of entry in a building large in size, occupied, as someone mentioned earlier, by probably a hundred men, women, and children, heavily armed? That, it seems to me, would not be an optimal entry. What say you to that?

Mr. BASSETT. The risks involved in any set of tactics have to be weighed against the necessity for their implementation, for the implementation of the tactics. In my view, there would have had to be compelling necessity extant in order to take the risks that were inherent in this operation.

Mr. COBLE. Thank you, Mr. Bassett.

Mr. Coonce, one final question. Does the DEA have any standing operating procedure about a FLIR signature of a meth lab?

Mr. COONCE. Not that I am aware of, sir.

Mr. COBLE. I think I have no more questions. Gentlemen, thank you all for being here. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Mr. Coble.

Mr. Condit, you are recognized for 5 minutes.

Mr. CONDIT. Thank you, Mr. Chairman. I too would like to welcome the witnesses and thank them for being here today.

I would like to maybe just focus for the few minutes that I have on this so-called drug nexus. Mr. Ishimoto, maybe you could respond for me, and if there is time, maybe the other witnesses can as well.

Are you aware, are there any other examples by which the military has been brought in or asked to come in under these kinds of circumstances where there has been some suspicions, someone has suspected that there are drugs involved? It appears to me that they came in with very little concrete information, that there were no standards by which they judged their involvement. Is this a practice that is going on in other parts of the country where ATF or other local law enforcement agencies can sort of bait the military to come in to get their equipment, to get their personnel there? Are you aware of that in any other parts of the country?

Mr. ISHIMOTO. Yes, sir. I should predicate it by saying that there is a review process conducted in the Department of Defense at several levels in order to ensure that the support rendered is proper.

Mr. CONDIT. There is a review process by DOD?

Mr. ISHIMOTO. Yes, sir.

Mr. CONDIT. Was the review process done in this case?

Mr. ISHIMOTO. To the best of my knowledge, sir, because I have seen signed memorandums from Col. Judith Browning, who was in charge of the counternarcotics effort within the Army at that point in time, and I have seen other documents signed by the ATF military liaison.

Mr. CONDIT. So in your report, you recommended that we have standards by which the military gets involved; is that correct?

Mr. ISHIMOTO. Yes, sir.

Mr. CONDIT. Do those standards that you are recommending in your report go beyond this review process, or is it the same as the review process?

Mr. ISHIMOTO. It is essentially the same as the review process. In my estimation, there was perhaps a breakdown.

Mr. CONDIT. Anyone else wish to comment on that?

Mr. MORRISON. In dealing with the National Guard, for example, in California, we have a memorandum of agreement as to what equipment will be used, how it will be used, who is in control of the equipment, and under what conditions it can be used. Appropriate executive level of a local law enforcement agency or a regional task force is one element on that MOA and has a counterpart in the State National Guard.

For the most part, these are standing agreements, and the use of military equipment, for example, in overflight is to augment existing investigative efforts and is more of an ongoing program as opposed to a single-incident program. In the case of a single-incident program within California, use of the National Guard equipment, there would have to be a compelling reason to use that, and that would be the first point of contact, not the Federal military.

Mr. CONDIT. I am a bit surprised, Mr. Ishimoto, that you say the standards were met, because it appears that there is very minimal evidence that there might be drugs being produced there, sold there, used there, et cetera. That really surprises me that you say that the review process would adequately under these circumstances.

Mr. ISHIMOTO. Sir, I did not say it was adequate. I said that the process was followed, and I believe that there certainly was a breakdown. But that breakdown is not necessarily on the part of ATF. I would look to the military review process to see if that was adequate.

Mr. CONDIT. As well, would it have been appropriate for the ATF, before it moved for military help, if they thought they had a massive drug operation here or any kind of minimal drug operation, asked the DEA to be involved since this is the DEA's area of expertise?

Mr. ISHIMOTO. If the primary violation was drugs, I would certainly say so. In this case, the primary violation that ATF was investigating and attempting to serve the warrants on dealt with firearms and explosives violations.

Mr. CONDIT. That may be correct, but it is my understanding they got the military involved in this issue based on the suspicion that there was drugs being made at the facility.

Mr. ISHIMOTO. Sir, let me clarify that. They got nonreimbursable support from the military and the Texas National Guard because of a drug nexus. They could have received military support on a reimbursable basis.

Mr. CONDIT. My time is up. Thank you very much.

Mr. MCCOLLUM. Thank you very much, Mr. Condit.

At this time I yield to Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. And it is my distinct privilege to yield my time back to you, sir.

Mr. MCCOLLUM. Well, thank you very much, Mr. Shadegg, and I will start the 5 minutes here.

I want to direct my questions to mostly you, Mr. Bassett, for some specific reasons. I understand that you have been with the FBI or were with the FBI for more than 30 years. Is that correct?

Mr. BASSETT. No, sir. I would like to correct the record. My tenure with the FBI was for slightly over 23 years, sir.

Mr. MCCOLLUM. That is still a pretty good period of time. We will accept that. And during that time, did you head the Crisis Management Team there?

Mr. BASSETT. I was responsible for the FBI's Crisis Management Program for the last 5 years of my career, yes, sir.

Mr. MCCOLLUM. What was that?

Mr. BASSETT. The Crisis Management Program in the FBI is a program which is an umbrella for various components of what one could call the special operations facet of FBI operations.

Mr. MCCOLLUM. And if you had the need for something such as the raid or a siege of a compound like at Waco under the FBI's jurisdiction during your tenure there, you would have been the one who would have headed the planning operation for that. Is that correct?

Mr. BASSETT. Not necessarily, no. I could have been involved in the planning and the operation and as a consultant, but the actual planning would occur on the part of people in the field.

Mr. MCCOLLUM. But you were in charge of the team itself or the program, the development of that program?

Mr. BASSETT. I was responsible for the program, yes, sir.

Mr. MCCOLLUM. So, in essence, you have quite a background, is what I am getting at, in looking at this type of situation in terms of the type of operations that might or might not be involved in Waco; is that not correct?

Mr. BASSETT. I spent a good part of my career specializing in this type of operation, yes, sir.

Mr. MCCOLLUM. Now, Mr. Bassett, you have already said today that you did not think that this was the optimal method of going in and having a raid in the situation we have had today. Isn't it true that a dynamic entry like the one we are talking about that the ATF tried to perform on February 28, 1993, is the most dangerous type of tactic to employ and requires a lot of advance training? Isn't that true?

Mr. BASSETT. That is a relative notion. It can be reduce risk if the people who are executing or implementing the raid are properly trained, the planning has been properly done based on good intelligence. However—

Mr. MCCOLLUM. But it is more dangerous than most types of things they do? I mean, if you are going to go out and have a siege, it is more dangerous than a siege, isn't it?

Mr. BASSETT. Yes, it is.

Mr. MCCOLLUM. All right. Weren't the roads that were open and leading to this compound, the fact they were all open and there was a lack of cover, a factor that would dictate against that type of operation in Waco?

Mr. BASSETT. The exposure of the approaching raid teams was a major problem at Waco, in my estimation, particularly the fact that it funneled the approaching agents into a position where they simply could not retreat from and at the same time defend themselves. They could not turn their vehicles around as they approached the compound.

Mr. MCCOLLUM. Having looked at this matter as you have, what would be your opinion as to the preferred method of having approached this as opposed to this dynamic entry?

Mr. BASSETT. I would have to go back to the notion of intelligence, once again, and hope that intelligence gathering had been more rigorous, that more attention had been paid to the intelligence prior to the time the option to raid was selected; in other words, looking more studiously at the prospect of arresting Mr. Koresh away from the compound, and thereby removing him as the commander, so to speak, of the cult population.

Mr. MCCOLLUM. You believe that arresting Mr. Koresh away from the compound was a critical missing element in this situation?

Mr. BASSETT. I believe that it could have greatly reduced the risks attendant to the service of the arrest and the search warrants, yes, sir.

Mr. MCCOLLUM. And you would have preferred probably to try the siege rather than to do this entry or not?

Mr. BASSETT. The entry as it was planned and attempted I think was riskier than a siege would have been, yes, sir.

Mr. MCCOLLUM. Now, there has been a lot of innuendo that a siege might have resulted in suicides or whatever inside there. That, of course, is a factor in all of this. Did you take that into account or have you taken that into account?

Mr. BASSETT. Yes, sir, I have. And, of course, I have to point out that my observations are in hindsight, in looking back at what the planners knew at the time.

Mr. MCCOLLUM. Of course. But would you have gotten some religious expertise, some expertise in psychiatry and so forth, more than ATF did before you made the determination to go with a dynamic entry as opposed to a siege? Would you have done some of that type of intelligence gathering?

Mr. BASSETT. That would certainly be incorporated in the type of intelligence gathering that would have reduced the risk greatly in this operation.

Mr. MCCOLLUM. But, most important, you would have gotten Mr. Koresh, if you could have? That would have been your first central focus, to arrest him outside that compound; is that correct?

Mr. BASSETT. That is correct, sir, yes.

Mr. MCCOLLUM. And that was not done in this case. Thank you very much.

At this time my time is up, but I will yield to Ms. Lofgren 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

I am very interested in how we can review this situation and make sure that our country does a better job in the future of dealing with cult situations such as this that we could face in the future. And I am interested in the multidisciplinary team approach

and how that might yield more suitable or positive results in the future.

In terms of who was there and the multidisciplinary nature of the serving of the warrant itself and the entry in April, Mr. Ishimoto, were there DEA agents there at the raid? In the course of your review, did you find that?

Mr. ISHIMOTO. Ma'am, I am not sure if they were on site. It is my recollection that at least one was and that the DEA was asked to have people on site by ATF.

Ms. LOFGREN. And that was to advise where to use the flash bangs, to keep away from a meth lab, to avoid explosion and that sort of thing?

Mr. ISHIMOTO. No, I am not sure exactly what their role was supposed to be.

Ms. LOFGREN. And were there INS agents present?

Mr. ISHIMOTO. That I do not recall.

Ms. LOFGREN. We can talk about the day of the raid itself and the dynamic entry. But stepping back a bit, by the time the raid occurred, I think a lot was known or strongly suspected about what was going on inside that compound. And although the information might not have been in a form that could have been used to obtain a warrant, for example—a warrant had already been obtained, a valid warrant for the search—the Waco newspapers had printed their series. Agents could easily know from reading those articles that 12-year-old girls were being raped repeatedly, that all the male adult members had been removed from their wives and were celibate, so that Mr. Koresh, the Christ figure in his own mind, could have all of the children for use sexually, that there was dire physical abuse underway, with babies, and there had been kidnappings. There were immigration violations, little girls who had crossed State lines.

There were a number of Federal law violations present in that article. There were a number of State law violations in terms of the child abuse and the molestations. And I am wondering whether we have adequate resources and research in the Federal Government to put together a team that is made up of both Federal officials, local officials, mental health specialists. I am looking backward, and I know that the people who were involved yesterday will always live with the result of the raid. Hindsight is 20-20, but looking ahead in the future we need to know whether mental health professionals and a different approach might have yielded a different result.

Do you have a professional opinion on that, Mr. Ishimoto?

Mr. ISHIMOTO. Yes, it is a very tough issue. For years, the Behavioral Science Unit at the FBI's National Academy or training academy, where Mr. Bassett used to work, has looked into matters of that sort. ATF, in fact, was one of the first contributors to assign agents to the FBI Academy to assist the Behavioral Science Unit in trying to look at these kinds of folks that they deal with. But it is a very contentious issue and one that I certainly believe deserves further investigation.

Ms. LOFGREN. Mr. Morrison, this may be unfair to ask you because it is not your department, but early, according to the Waco paper, in August 1990, the Pomona Police Department became

aware that a little 2 year old had been kidnaped in Texas and that a 12-year-old girl who was from Australia had been—after the kidnaped child was returned, had been moved to Texas and was being abused. Apparently that was known to them.

I do not want to criticize the officers, but based on standard operating procedure in the L.A. basin in your professional judgment, what would ordinarily happen with a fact situation like that? Was it a glitch? Would ordinarily proper procedure be to ask the FBI to pursue the transport of the child across State lines? What would generally be expected? That did not happen then. Had it, maybe a lot of things might not have happened down the line.

Mr. MORRISON. I cannot give you specific responses because I am not familiar with each aspect of the case. I can talk generically about that.

In the case of missing children, if it is beyond a child custody case where you have specific principals involved, it is common in the Los Angeles basin for law enforcement agencies to join forces. If there is a belief that there is a cult operation or any conspiratorial act to do that, in those cases we would work with the FBI or any other Federal agency that might have a jurisdiction in the case.

I think that what your question leads to specifically as to Waco, trying to come back into the focus on that, is the need for a case management review and the intelligence analytical review in major cases of this nature. The same thing would be true in serial murder or rape cases. You bring in as many of the disciplines as you possibly can and any agency that is willing to cooperate upon invitation or request, whether or not they have jurisdiction.

There are limitations as to the criminal jurisdiction in cases that will prevent either a State, local, or Federal agency from becoming involved in anything other than an advisory capacity because they do not have the investigative authority, perhaps, given by law. So I am kind of covering the whole base, but that is basically what you are dealing with there.

If you have a specific missing child complaint, that is up to the jurisdiction that initially has it. If they believe there is an interstate involvement, they would go probably to the FBI. To the extent that it is conspiratorial in nature and that there is an activity in another State, the local law enforcement agency would then go to that State and try and work with the agency there to help them follow up their leads.

Mr. MCCOLLUM. Thank you, Ms. Lofgren. Your time is up.

Mr. Clinger, you are recognized for 5 minutes.

Mr. CLINGER. Thank you, Mr. Chairman. I would just like to thank the panel for their participation and their testimony and yield the balance of my time to Chairman Zeliff.

Mr. ZELIFF. Thank you, Mr. Clinger.

Mr. Coonce, we were talking earlier about the danger of taking down a meth lab and the things that you have to be aware of in terms of caution. What is your reaction to combining a take-down of a meth lab with a dynamic-entry raid?

Mr. COONCE. The only thing I can say, Congressman, is that each laboratory is different, and you have to take all of the facts and all of the probable cause and the circumstances and then make

a decision at the time. Because each one of these laboratories is different. There is something always different about these laboratories.

Mr. ZELIFF. I guess I would ask a question of everybody on the panel, since you had the opportunity to, after the fact, review what happened at Waco. Do any of you believe that there was any drug connection at all at Waco?

Mr. COONCE. I cannot answer that question, Congressman, because I do not have that information, nor have I reviewed it.

Mr. ZELIFF. That is fair.

Mr. ISHIMOTO. I do not believe that there was any drug connection.

Mr. ZELIFF. OK.

Mr. SANDERS. My opinion is based purely on the public record, and I have not seen any indication of a drug nexus.

Mr. ZELIFF. Mr. Morrison.

Mr. MORRISON. I do not believe so. I think it was considered and rejected, and it was not part of the planning element for the raid to consider confrontation with the meth lab.

Mr. ZELIFF. Mr. Bassett.

Mr. BASSETT. I have no factual basis to believe one way or the other, sir. But my understanding is that there was no drug connection.

Mr. ZELIFF. Thank you very much.

I want to respond to Mr. Schumer's 12th-hour announcement that all documents will now be produced by Treasury to Congress. We appreciate that very much. Today, of course, is July 20. Our first full document request was on June 8. I think those dates and the difference between the two sets of dates speak for themselves.

Second, the missing Webster Hubbell telephone diaries are not obviously going to come from Treasury. They must come from Justice. At this point, we have most of Mr. Hubbell's messages, including those both to and from the White House, including one from Mrs. Clinton, between March 1, 1993, and April 30, 1993. However, we are still missing Webster Hubbell's telephone notes and messages for at least 4 days: April 16, April 17, April 18, and April 19. You will recognize the significance of those dates. These logs include Hubbell's communications with the White House and within the Justice Department, which is why they are very important. If these documents are now on their way, I would be happy to hear that. And since you raised it, Mr. Schumer, we would really appreciate any assistance that you could provide.

I will raise the issue again, and, again, on your suggestion, if we do not get them—we would appreciate getting them before Mr. Hubbell's testimony. Let me add that this is just one fact that we are talking about in terms of production of documents. We received at one point 13,000 loose-end, unindexed pieces of paper from the initial Treasury production. That is quite—you know, admittedly, they did a piece of the project, but it was not well organized, and it was certainly not very helpful in the way it was presented.

We just got six new boxes, thousands of field documents, yesterday, and I want you to know that I have tried to get cooperation from all agencies, and it is getting a little bit better, but is not complete yet. And the hearings are definitely under way. This is day



two. If any of you can get to the bottom of the missing documents before the hearing is over, it would be greatly appreciated.

Thank you. I yield back the balance of my time.

Mr. SCHUMER. Would the gentleman yield?

Mr. ZELIFF. I yield back the balance of my time to Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you so much.

Mr. SCHUMER. Would the gentleman yield so I could answer his question?

Ms. ROS-LEHTINEN. I just have such very limited time, and I am sure that the next questioner will be glad to do that.

Mr. SCHUMER. Then I would ask just before the gentle lady, since we are on this subject—

Ms. ROS-LEHTINEN. Of course.

Mr. SCHUMER. I would ask unanimous consent I be given 2 minutes just to deal with some of the questions that Mr. Zeliff brought up.

Ms. ROS-LEHTINEN. If that is going to be taken out this time, though, Mr. Chairman?

Mr. MCCOLLUM. No, no. Unanimous consent, not out of your time. Without objection, so ordered.

Mr. SCHUMER. I thank the gentleman.

Mr. MCCOLLUM. The gentle lady still has a minute and about 20 seconds.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

Mr. SCHUMER. What I would say is every time that the majority has made a request—

Mr. MCCOLLUM. You want to do it now, your 2 minutes now?

Mr. SCHUMER. Yes, I would like to do it now.

Mr. MCCOLLUM. All right. I yield to you.

Mr. SCHUMER. I thank the gentleman, and he always is fair, as I have said.

Every time the gentleman and the majority has asked for documents from the White House, from Treasury, from others, they have been given every single document. They asked for one group; then they want another. They ask for another, and then they get a third.

Here are these. These are the documents. Mr. Zeliff, they have been sent to you, but I will give them to you. Every single phone call that Webb Hubbell—

Mr. ZELIFF. Wait a minute, just—

Mr. SCHUMER [continuing]. Has made from—please. It is my time, and I will yield to you when I am finished.

Mr. ZELIFF. Those are the documents from where?

Mr. SCHUMER. Every single phone call from Webb Hubbell, because they love to bring in the name Webb Hubbell, from the White House to Justice, within Justice, is here. Yes, there are lots of pages. We have given you—the administration has given you 13,000. Here they are. Take them.

Mr. ZELIFF. Could the gentleman from the Department of Justice please come in? Are you delivering them for someone else?

Mr. SCHUMER. No. You have gotten the same package, but you refuse to say it. We have all gotten it, myself, Mrs. Thurman—

Mr. ZELIFF. That is not true.

Mr. SCHUMER [continuing]. Yourself, and Mr. McCollum. But you can have mine because I know there is nothing there.

But we keep making an issue, what I find so ironic is we keep making an issue of Justice Department documents, of Presidential documents, 13,000 of them, everything in them, private meetings with the Council where we go over even the President's own personal notes, nothing is found, and then a request for more documents. But when there is something very relevant——

Mr. ZELIFF. Good quality documents.

Mr. SCHUMER. That is the document because those—on that page there are no calls to the Justice Department and no calls to the White House.

Mr. ZELIFF. This is Janet Reno's material right here?

Mr. SCHUMER. No. That is Webb Hubbell's.

OK. They cannot get every phone call——

Mr. ZELIFF. This is the office of Janet Reno——

Mr. SCHUMER. You can have your time. OK? The bottom line is every single call that Webb Hubbell has made from Justice and from the White House that has been requested has been given. Not calls that he has made to other things. And I find the majority here—you talk about smoke screens. This is one of the largest I have seen. If they are so interested in complete disclosure from the administration, why can't we have some complete disclosure from the NRA and from the committee staff? What is good for the goose is good for the gander. And that is the bottom line.

Mr. MCCOLLUM. The gentleman's time has expired. The Chair will take note that there were some documents delivered. We have not examined them. We do not know what is in there. We trust the gentleman's word that is what they are, and we will certainly take a look at them. But I must say just in one comment, and I am going to quit and yield back the minute and 20 seconds or whatever to Ms. Ros-Lehtinen that she has, is that we have generally received cooperation from these agencies, but there has been a problem with some of the productions, and that is what this dispute is over. And I do not profess to know whether the produced items resolve that dispute or not.

Ms. Ros-Lehtinen, you have a minute and 25 seconds, I think.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

Getting back to the main points of today's hearing which deal with the inadequate training of the personnel, the poor planning, the ATF dynamic-entry plan, which was way too risky for both the ATF agents and civilians on the compound, the lying about the drug lab—those are the issues of today, and I would like to continue asking Mr. Ishimoto about your report.

You had stated in your report that the ATF plan did not provide adequately for contingencies. You cite failure of the ATF to use a fire maneuver and armor to protect and recover their wounded as an example of the poor planning involved.

In your estimation, to what degree did this failure to plan for contingencies contribute to the deaths and the injuries of the ATF personnel?

Mr. ISHIMOTO. I do not believe it contributed to the death or injuries——

Ms. ROS-LEHTINEN. Do you believe that it revealed a lack of professionalism in the planning of the raid?

Mr. ISHIMOTO. I certainly believe that the professionalism could have been improved.

Ms. ROS-LEHTINEN. Could have been improved?

Mr. ISHIMOTO. Could have been improved, yes, ma'am.

Mr. MCCOLLUM. I thank the gentlelady. The minute and whatever is up at this point. I am sorry I have to cut you off at this juncture.

Mr. Taylor, I believe you are next, and we recognize you for 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman, and I want to thank the panel for being with us today. I do not think anyone in this room doubts that the job could have been done better, but I think all of us regret that four good people are dead and another 20 were wounded trying to enforce the laws of this country. I do not think any of you are going to disagree with that.

I would like to direct my statements to two, in particular. Mr. Ishimoto, a lot has been made of the fact that the Army trained these people for 3 days. Now, according to testimony that I have received in the Armed Services Committee over the years, it takes months, like 4 or 5 months, to even get a National Guard or a Reserve brigade up to deployable status. Is that not correct?

Mr. ISHIMOTO. Yes, sir.

Mr. TAYLOR. So 3 days does not make an ATF agent Special Forces, does it?

Mr. ISHIMOTO. No, sir. And they had done training previously.

Mr. TAYLOR. But it is safe to say that when this 20th Special Forces was called up—and I know this personally because they are Mississippians—they all were qualified, Special Forces qualified 100 percent. But it took months to do so. Is that not the norm even for Special Forces reservists?

Mr. ISHIMOTO. That is the norm, yes, sir.

Mr. TAYLOR. OK. So we have made point one that this is not a military operation. This is an ATF operation. The people do not have the fear that the military is taking over.

Mr. Morrison, I would like to bring to your attention an article that appeared in the local paper the day before the raid. It was written by two reporters who left town on the day of the raid—who left town after publishing it, I take it, for fear of their lives. The paper that reported this changed the security measures at the paper. They put different locks on the doors. They made people get identification passes, and they got the reporters out of town for fear for their lives.

Now, it is not Waco. It is Los Angeles. And it is not the Branch Davidians. It is maybe the Aryan Nation or maybe even the Black Panthers. And you get a report that people are amassing hundreds of semiautomatic weapons that they are converting to automatic. It is published in the local paper. They are molesting children. They are keeping people against their will for months at a time, and they are compiling a hit list of former members that they want silenced, and the word they used is "eliminated."

Would you, as the former head of the Los Angeles Police Department Tactical Unit, ignore that? Would you not try to take some

steps to protect the people of Los Angeles? Let's keep in mind that unlike a wealthy community like Los Angeles that has its own helicopters, most local communities, including those in south Mississippi, do not. I represent 11 counties. Only one of them can afford the approximately \$400,000 a year it costs to get even a surplus helicopter and maintain it and have a qualified pilot.

Keeping all these things into account, including on the day of the raid—the day before the raid, I am sorry, an editorial in the local paper that is calling on law enforcement communities to do something about—in fact, it quotes, it says, “Three former cult members flew from Australia last February to testify that Howell had sex with underage girls, abused children, whipped babies as young as 8 months old, turned Mount Carmel into an armed camp, and split apart the families and his followers, declaring himself the only perfect mate for the women in the cult.” Then later on, it talks about the weapons. Later on it talks about the death threats to former members.

What would you do? You are a former policeman. You have a paper in your district, if I am not mistaken, called the Los Angeles Times. What if they had run the same editorial? Would you ignore it?

Mr. MORRISON. No.

Mr. TAYLOR. What would have done, sir? And everybody realizes they should have called off the raid when they were discovered.

Mr. MORRISON. Mr. Taylor, with all due respect—

Mr. TAYLOR. Would you have done nothing?

Mr. MORRISON [continuing]. I am not sure what the context of your question—if you could give me your question in a context that I could answer, I would appreciate it, sir.

Mr. TAYLOR. Sir, I will. What would you have done differently? And, again, I am not an attorney. But even if you arrest Koresh off the premises, can he post bond and go right back on the premises? You now have a person—again, it is not Koresh. It could be the Aryan Nation. It could be the Black Panthers. It could be any group that advocates violence and then mass suicide. What would you do knowing that he could post bail and go right back to this compound?

Mr. MORRISON. If you are asking me what would I do based on a newspaper article that was developed on something that I was currently investigating, I would take that information into consideration. It would be part of my case management. I would talk to or assign someone to talk to the research investigators or reporters that dealt with that to the extent that they were willing to talk. If they developed new information, I would attempt to add that to my case management or my intelligence, if I did not already have that. And that goes back to something that is already contained in the investigative report.

I believe that it would be advantageous to ATF to develop new methods of case management, intelligence review and analysis, and update—the purpose of this is to update any information you have before you get involved in the tactical situation.

As to your other points that you raise, you are talking about multiple jurisdictions. The local police agencies and the State agency within Texas had looked at criminal allegations and past com-

plaints and past criminal activities at that location. They had the primary jurisdiction for that. It is my understanding that the ATF aspect of this dealt with the firearms and the explosives at the compound. There had been earlier conversations between the ATF case agents and the investigators from the Department of Social Services from the local county sheriff's office. Those things had taken place. So I am saying that was ongoing.

You are asking me what would I do, and I will come back now and close that and say that I would have enhanced the case management and intelligence analysis review to get closure on any open-ended issues, and I would incorporate that information into any approval that I would give to the tactical plan to do a high-risk forced entry.

Mr. MCCOLLUM. Mr. Taylor, your time——

Mr. MORRISON. To your question on getting Mr. Koresh off the grounds——

Mr. MCCOLLUM. Go ahead, Mr. Morrison.

Mr. MORRISON [continuing]. Would the arrest off the grounds eliminate the need to later go on to the premises to conduct a raid, to serve a search warrant, the answer is "no." Would he be able to get out on bail if he were arrested? In all likelihood, yes, unless it were for a capital offense or something. I am not familiar with the bail schedule in that particular county or in the State of Texas, and I am not familiar with the Federal bail schedule for firearms violations.

So, you know, the list is endless. I could answer your questions, but you have added many elements in there, and each one of those deserves an answer, and I really cannot answer them in a limited time.

Mr. TAYLOR. If I may, one last comment. Isn't there a well-publicized case going on right now in your home town of someone who was apparently getting ready to skip bail?

Mr. MORRISON. Who would you be referring to, sir?

Mr. TAYLOR. It is on CNN every day, sir.

Mr. MCCOLLUM. The time is up for the gentleman. Thank you very much.

I yield 5 minutes to Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. Before yielding my time, I would like to emphasize the point that was just made a little while ago by the gentleman from North Carolina, Mr. Coble. All of us on this side of the aisle are disgusted by the behavior of Mr. Koresh, particularly in the area of child abuse. I think it is important that all these facts get out. It is good that the facts get out. I think that all of us are truly disgusted by what went on in that compound.

But Mr. Koresh was not a Federal employee, sworn to protect American citizens. The ATF and the FBI are sworn to protect American citizens, and, thus, when something goes as wrong as the raids on February 28 and on April 19, then it is appropriate that no stone be left unturned so that we learn from the mistakes that were made at Waco and so that they are never repeated.

Now I yield the balance of my time to the gentleman from New Mexico, Mr. Schiff.

Mr. SCHIFF. I thank the gentleman for yielding, and I would like to follow up both on the comments that he just made and the questioning by the gentleman from Mississippi, Mr. Taylor.

Mr. Morrison, I would like to turn to you, sir, and I have a copy of the report that you wrote as an expert adviser in the Treasury Department investigation of this incident. You said there, and I think you have quoted this before from your report, "The absence of management review led to a serious breach of integrity, falsification of documents." What documents were falsified?

Mr. MORRISON. I believe that that was in the—there were two elements there. I am not going to get into the internal investigation because that is not my jurisdiction or expertise, and I believe there is an ongoing administrative review. The falsification came in part unintentionally, and I believe at one point it was indicated to me that there may have been a deliberate falsification. But the fact that information was restricted or removed in what was forwarded to the tactical planners, I am putting it into that context; that the people charged with putting together the tactical aspect of this thing did not have the information that was known to other agents within ATF through previous case investigation or intelligence.

Mr. SCHIFF. Well, if any of this change of documents or withholding of documents took place, would you regard that as a serious matter in a plan like this?

Mr. MORRISON. I believe that it is critical that the planners have all information available, and if something has been considered and rejected, that they at least have that knowledge and be aware of that. And that comes into the case management.

Mr. SCHIFF. Now, you are aware that it has been charged here, and apparently substantiated, that David Koresh sexually abused young girls. You have heard that, haven't you?

Mr. MORRISON. Yes, sir, I have.

Mr. SCHIFF. Does that change your opinion of the critical nature of the information you just talked about within the Bureau of Alcohol, Tobacco and Firearms in planning this?

Mr. MORRISON. No, sir. That is not what I was referring to.

Mr. SCHIFF. I know that. That is my point. Is there any relation in your mind between the critical nature of the documents that were, if not falsified, withheld as a planning part of this operation and what Mr. Koresh may be doing inside the compound?

Mr. MORRISON. I guess I am having difficulty understanding the question. I think that information was——

Mr. SCHIFF. Well, I guess maybe that—excuse me. I think that is just because there is a difficulty in seeing why the sensationalist information has been piled in over possible defects of law enforcement.

Let me do one more thing. Let me read a quote from your report again, Mr. Morrison, please. You write, "After additional preliminary inquiry and research by the review, it was clear that the review's concerns were the same as mine. Brave and dedicated BATF agents and supervisors were allowed or directed to go in harm's way by substantial management and organizational deficiencies and in some cases an abdication of authority and responsibility by mid- and top-level managers."

Do you recognize that statement, sir?

Mr. MORRISON. Yes, sir.

Mr. SCHIFF. And that is out of your report after reviewing this whole incident?

Mr. MORRISON. Yes, sir.

Mr. SCHIFF. OK. Is there any reason to change anything now from what you wrote then?

Mr. MORRISON. No, sir.

Mr. SCHIFF. Thank you, Mr. Chairman. I yield back to the Chair.

Mr. MCCOLLUM. Thank you very much. Let's see. There is nobody on that side of the aisle, so the next person I go to is Mr. Barr. Mr. Barr, you are recognized for—or somebody else, if somebody else is ready. Mr. Heineman or Mr. Bryant. Mr. Heineman, would you like to take 5 minutes?

Mr. HEINEMAN. Thank you, Mr. Chairman.

I would like not to speak to the substantive matters here as much as my observations in the last 2 days. And I sit here as a 38-year member of law enforcement from 1955 to 1994, the last 15 years as a chief of police who has had the pleasure of working with governmental agencies, not the least of which is ATF. And I and my colleagues are not here to demonize ATF as an agency, to wit, pulling them apart in front of CNN and C-SPAN.

I think the larger thing that I am concerned about and we should be concerned about here is bringing the truth of Waco and Good Ol' Boys and Ruby Ridge to the public. Let them see exactly what happened. There is a lot of hatred across this country for governmental agencies, for Government regulations, not the least of which is borne by the ATF and the FBI. I think it is important for the people to know the truth, not rumor.

I read this report that was put as it relates to the investigation of the Waco incident, as it related to ATF. Some of what I read in there as a written document was contradicted yesterday by at least one member of the panel under oath. I have questions as to what the public was told. I am here to learn. I am here to ask questions. I think it is so important. I think there is a lot of frustration out there in the western part of this country as well as the East, that they are not getting a fair deal as far as finding out what is happening with the Federal Government. I think this is important.

It is not important by our colleagues across the aisle who scream about cutting school lunches to bring a 14-year-old girl in here who goes through pain, as her father went through pain yesterday listening to the sexual exploitations of David Koresh and a 14-year-old child. I was ashamed of us yesterday. I hope in the future we can arrange for incamera review of these things and shield children from having to go through that. That was disgusting, and I know I am taking a swipe at my leadership for letting that happen. We do not need to do that. It did not matter—we demonized David Koresh amongst ourselves and not for the public. We know that he was pervert. We know every bit as much as they know how bad he was. We are not here to make a point of that.

We are here to make a point of Government operations. Four brave ATF agents died, and I think the people need to know what happened. I think we owe it to them to tell the people. We as a Congress are on trial here. We have to be credible to the people, because if we are not credible to the people about the oversight of

agencies, Government agencies, then who is? Who is going to do it? Are we going to listen to the press? Are we going to be guided by the media? Are we going to leave it to our friends across the aisle who have been demonizing us since January 4? I think not.

I listened to what went on here today. I listened to Mr. Bassett talk about the intelligence breakdown, and I agree with you 1,000 percent. It was rotten. I tend to think nobody even considered and consulted the intelligence reports.

I would like to have been a fly on the wall at that meeting as far as tactics are concerned. Sure, it could have been done better. I am not too sure that it did not start out as a fait accompli to create an assault on Waco. I think there may be a different mentality in ATF from the people at the top in Washington to those street agents. I can guarantee you from working with street agents and for being in this business, if you took a whole group of street agents together and put them in a room, they would have come out with a reason and a way to get into that compound. The problem is we do not listen to them. The problem is we did not listen to the sheriff's department or the Texas Rangers. We just did what we thought brought high profile, in my opinion, and I condemn that. But we are here—I see I am out of time. Thank you, Mr. Chairman.

Mr. MCCOLLUM. That is all right, Mr. Heineman. You can always finish the last comment when I warn anybody. I tell that to any of the panelists. I am not here to cut you off.

Mr. Barr, you are recognized, if you wish, for 5 minutes.

Mr. BARR. With unanimous consent, perhaps Mr. Bryant can go first.

Mr. MCCOLLUM. I think Mr. Ehrlich is the one who wants to go. It does not matter at this point which order it is in, but, Mr. Ehrlich, you may be recognized, I think, by some understanding over there, for 5 minutes.

Mr. EHRLICH. And I will yield to Mr. Shadegg, Mr. Chairman.

Mr. SHADEGG. I thank my colleague for yielding to me, and I appreciate his being willing to surrender this time.

I want to follow up an issue. You gentlemen bring us a great deal of expertise, and I would like to tap that to discuss an issue that bothers me deeply. Several of you have discussed intelligence. Let me ask you all, you all believe that intelligence is vitally important to an operation of this type; am I correct about that?

[Witnesses nodding.]

Mr. SHADEGG. And I take it you would all pursue—that was an affirmative nod by all of them. You would all pursue every opportunity at gathering intelligence that was open to you, if you could, wouldn't you?

[Witnesses nodding.]

Mr. SHADEGG. You certainly would do that before using a dynamic-entry procedure of this type, I presume; is that correct? Is there anybody that disagrees, says no, you wouldn't pursue intelligence?

[No response.]

Mr. SHADEGG. There was some disturbing testimony that came out yesterday, at least disturbing to me, that suggested that although the ATF had been offered an opportunity to have an agent



go inside the compound and inspect these weapons—and just to quickly summarize it, Mr. McMann, the gun dealer, was being interviewed by Mr. Aguilera, the BATF agent in charge; Mr. Aguilera was there, in Mr. McMann's home, which was his licensed premises. They were asking him routine questions. McMann, unbeknownst to them, goes to the phone and calls David Koresh and says, I have got these agents here. They are concerned. They are raising some questions. "What should I tell them?" And Koresh says, "Well, tell them to come see me."

McMann goes to Agent Aguilera and says, "I've got David Koresh on the phone right now. He would like to talk to you, and he would like to extend you an offer to come over and look at the weapons he has at his location."

Mr. Aguilera declined that offer, said no, he did not want to do that at that time. I can understand as a former assistant attorney general why an agent would not want this happenstance to dictate the point in time when you take up such an offer.

What disturbs me, and what I want to ask you about—and I want each of you to individually answer—is: In later testimony we establish that Agent Aguilera gave that information to his supervisor. He told his supervisor that, yes, in this conversation Mr. Koresh had offered to allow Mr. Aguilera and his companion who was there with him, an accompanying agent, to go to the compound and to look at all the weapons present in the compound and inspect them and make whatever ascertations they need to make with regard to firearms violations. Agent Aguilera had declined it at the time.

What troubles me is that at no time between when that conversation occurred did anyone in the ATF ever go back to Mr. McMann and say, gee, can you call David Koresh and ask him if we now can come in and look at the weapons. They did not call Mr. Koresh themselves and say you once made an offer saying we could come in and look at the operations. They did absolutely nothing ever, right up until the point where they walk up to the front door with their guns, and conduct and carry out the dynamic entry which results in the tragic death of several agents and the deaths of some people on the inside, and later ultimately leads to the deaths of everybody involved. They never once followed up on that offer, never even tried to follow up on that offer.

Mr. Sanders, let me ask you, do you believe that was proper? Can you imagine a circumstance under which you would not even attempt to take up such an offer?

Mr. SANDERS. I cannot imagine any circumstances that I would not take up such an offer. It indicates to me not, you know, a willingness to accept the terms of Koresh's when to go out there, but it indicates a mindset that perhaps it was nonwillful. Perhaps what the ATF thought were violations of the law were really things that Mr. Koresh thought were legal.

Mr. SHADEGG. It suggests perhaps that what they really wanted to do was to conduct a raid, not make an arrest or conduct a search.

Mr. SANDERS. Unfortunately, and I think that is what Mr. Heineman has just stated. These were not agents that planned that.

Mr. SHADEGG. Mr. Ishimoto, there is nothing in your report or the Treasury's report about this issue. I find that surprising.

Mr. ISHIMOTO. Would you rephrase the question, sir?

Mr. SHADEGG. I guess I would like to know, is there a circumstance under which you would not even take up such an offer, not even try to take it up? And I also find it surprising that this discussion is not in your report; perhaps you did not know it.

Mr. ISHIMOTO. I did not know about that offer that was made. I believe that was inadvertent. I would have taken it up, either from an intelligence-gathering standpoint or from an investigative standpoint.

Mr. SHADEGG. Mr. Morrison.

Mr. MORRISON. I covered that, I believe, on page B-87 where I indicated the Bureau's activities, expectations, and daily performance of personnel appeared to have exceeded the ability of the existing management and organization structure to properly audit, inspect, supervise, and manage. I was not aware of the particular information that you have presented here today. I do not think that that would have substantially changed my comment. This is an example, if, in fact, that occurred in the context as it was presented here, that is an example of a management followup responsibility in the investigative caseload. A decision should have been made at some point to seek closure on that, either by policy, by procedure, by legal restriction, we cannot take up this offer, or we will do it at some point down the line and put a tickler on that until there is closure on it. That is part of investigative case management. In major cities and small cities both, you have clue chasing. You resolve each and every clue as it comes to you, and that is an example. If it occurred in that context, they should have presented it.

Mr. SHADEGG. Mr. Coonce, would you do a drug investigation and not take up such an offer?

Mr. COONCE. Well, sir, I do not have the information available to Agent Aguilera and/or his supervisor, and I would suggest that the people that could best answer that question are Agent Aguilera and his supervisor.

Mr. MCCOLLUM. Mr. Shadegg, your time has been up, and I have been lenient and not called it.

Mr. SHADEGG. I thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you very much.

Mrs. COLLINS, you have come in, and it is certainly your turn if you would like to have 5 minutes.

Mrs. COLLINS of Illionis. Thank you, Mr. Chairman.

Let me say that the focus of this panel has been the inadequate planning for the raid, and I would like for each of the panelists to indicate the time frame that they were focusing on, please. Mr. Ishimoto, particularly, and then Mr. Morrison.

Mr. ISHIMOTO. Our review extended from the initial opening of the investigation approximately in May 1992 up until the events that transpired on March 2, where ATF turned over the jurisdiction to the FBI.

Mrs. COLLINS of Illionis. Mr. Morrison.

Mr. MORRISON. That is my understanding.

Mrs. COLLINS of Illionis. That is your understanding as well. Well, let me ask the both of you, too. On page 62 of the Treasury

Department report on Waco, it indicates that the technical planners developed their plan in accordance with the ATF national response plan, which defines objectives, policies, and procedures. So the question to each of you would be whether there are any changes to the national response plan that should be made in order to ensure a better coordinated response and rapid deployment of ATF resources. Mr. Morrison?

Mr. MORRISON. I believe that that is already covered in our previous report.

Mrs. COLLINS of Illionis. Mr. Ishimoto.

Mr. ISHIMOTO. It was our recommendation that the national response plan was a good first step but was certainly in great need of improvement.

Mrs. COLLINS of Illionis. How would you improve it?

Mr. ISHIMOTO. By expanding upon it and——

Mrs. COLLINS of Illionis. How would you expand upon it?

Mr. ISHIMOTO. Through the inclusion of appropriate policies and procedures, which would be very extensive for me to get into. It was a shell of a plan. It was a step in the right direction. But there were any number of cleanup actions that needed to be done to improve it.

Mrs. COLLINS of Illionis. The success of the ATF's planned raid was predicated on the Davidian men being in the pit at 10 o'clock in the morning, as I understand it. Yet as the Treasury report makes clear on page 64, this assumption was not communicated to the undercover agents, and it seems to me that this failure of communication was a fundamental problem in the raid planning process because it led to inadequate intelligence gathering. So the question is: What were the flaws in the communication process between planners and undercover agents, one? And how can they be prevented in the future? Mr. Morrison.

Mr. MORRISON. That would come under, again, the case management, intelligence management, and the command and control once the raid was committed. If it is determined that there is a critical element that the men be in the pit in order to accomplish the raid and that, in fact, is not occurring from information from the observations post or from whatever intelligence can be obtained, whether it is airborne assessment or the observation post, that needs to be conveyed to the tactical leaders immediately so that they can determine whether this will cause them to abort the mission or whether they can safely proceed. If the men are not in the pit and that is a consideration, then where are the men, and what danger do they pose?

Mrs. COLLINS of Illionis. So would you say that was part of the flaw—was there a flaw in the communications there?

Mr. MORRISON. There was difficulty in communications throughout. The communications net, as used the day of the raid, was not adequately tested and had timelags because of the relay system. That was not compensated for, in my personal opinion, by organizational mitigation. So the communications system was inadequate, and it was not covered in the operational plan.

Mrs. COLLINS of Illionis. Is that your finding also, Mr. Ishimoto?

Mr. ISHIMOTO. I guess from my viewpoint the long-range fix lies in training, and for the crisis managers in the ATF to understand

how they can communicate better and the critical elements for success that need to be identified.

Last, but not least, appropriate training would then lead to the right kinds of questions that could have been asked. For example, it is my understanding that Mr. Sarabyn asked of Agent Rodriguez, Do you see anybody in the windows and do you see anybody getting ready? And a better question, in hindsight, that could have been asked would have been: Do you see the men in the pit and is everything as we expected it?

Mrs. COLLINS of Illionis. I yield the remaining time to Mr. Taylor.

Mr. TAYLOR. I thank the gentlewoman. Before this panel is dismissed, I just want to ask you each one question. Does anything that you have seen or heard or read about the raid on February 28 justify in your minds the deaths of four ATF agents and the wounding of 20 more by David Koresh and his followers?

Mr. ISHIMOTO. No.

Mr. MORRISON. Absolutely not.

Mr. COONCE. No, sir.

Mr. BASSETT. No, sir.

Mr. MCCOLLUM. Your microphone is not on, Mr. Sanders.

Mr. TAYLOR. Mr. Sanders, am I being asked to repeat the question?

Mr. SANDERS. No. I just want to clarify the question, sir. The question is whether anything justified the killing of four BATF agents?

Mr. TAYLOR. Anything that you—you are experts on this subject. Anything that you have seen or heard or read, does it justify the killing of four ATF agents and wounding of 20 more by David Koresh and his followers?

Mr. SANDERS. Nothing that I can imagine would justify that.

Mr. TAYLOR. Thank you very much, sir.

Mr. MCCOLLUM. Thank you. Mrs. Collins, your time is up.

Mr. Barr, you are recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Sanders, if I could recap a couple of things before asking you a couple of questions, you have well over two decades of experience in law enforcement.

Mr. SANDERS. Yes, sir. I was with ATF for 24 years.

Mr. BARR. Are you very familiar, then, with ATF procedures?

Mr. SANDERS. Very much so. I was involved in practically all policies and procedures which are still in effect.

Mr. BARR. Are you familiar with a shooting review?

Mr. SANDERS. Yes, I am, sir.

Mr. BARR. Is that the mechanism that goes into place where there has been an incident involving the discharge of firearms in an ATF operation?

Mr. SANDERS. Every time a firearm is discharged, the shooting review team—

Mr. BARR. And is the purpose of that shooting review to determine what happened, if there were any problems, and if so, to identify those problems so they can be corrected?

Mr. SANDERS. It is to initially get out there as fast as possible to learn the facts, lock in the facts.

Mr. BARR. To preserve evidence?

Mr. SANDERS. Yes, sir.

Mr. BARR. In your experience, if there were directives from the Department of the Treasury to ATF and from the Department of Justice to ATF to not interview witnesses, to cease the gathering of evidence, to make sure that the gathering of that evidence is put off as long as possible so that witnesses' memories dim, and so that in those instances where interviews have to take place, no notes be kept so that no exculpatory or damaging information can be obtained, is that proper procedure?

Mr. SANDERS. That would be interference with a criminal investigation or obstruction of justice.

Mr. BARR. I would ask you to take a look, if you would, please, if I could have one of our clerks hand you some documents. Sir, these were discussed yesterday and I know that we will not have time in the couple of minutes here for you to review them exhaustively, but one of the documents dated March 1, 1993, actually the document is dated September 17, but it refers to a March 1 meeting specifically referencing the shooting review.

And there are notes in there. This is a Department of the Treasury document in which the assistant U.S. attorney is advising Hartnett to stop the ATF shooting review. There is another document that you will see there dated April 14, a Treasury document, which says the Department of Justice does not want Treasury to conduct any interviews or have discussions with any participants who may be potential witnesses. And then later on, there is the reference that I mentioned earlier about hoping the passage of time will dim memories.

The prosecutor is being concerned about developing anything negative, even preliminarily. You will see a memo dated April 9, 1993, in which, again, with the Treasury Department coming from their Deputy General Counsel, references Department of Justice prosecutors saying words critical of ATF must be avoided.

And then you will also see some handwritten notes which are less clear, certainly since they are handwritten notes, than these official documents that I have referenced earlier.

Would this, in your mind, raise the specter of, at best, a disinclination on the part of the administration to see that the facts come out and to do a proper shooting review, and at worst, a deliberate effort to make sure that the facts do not come out?

Mr. SANDERS. Yes, I agree with both.

Mr. BARR. In your experience, in your years with the Treasury, have you ever seen anything like that?

Mr. SANDERS. No, I have not, sir.

Mr. BARR. Thank you. I yield back the balance of my time, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Mr. Barr. Seeing no one on my left who has not had an opportunity. Mr. Bryant.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman.

Let me reiterate what Mr. Chabot has said that no one on this side, and I am sure on the other side, would condone what Mr. Koresh was doing out there in terms of abusing children and certainly no one would condone the reaction of the Branch Davidians

in firing back on lawful officers out there to serve a warrant whether it was the worst warrant in the world or not.

Again, the way to challenge those is in the courts, as we said yesterday, and not with bullets. But, on the other hand, if you objectively review what went on out there, in what I call the two dynamic raids, it would have to be judged totally unsuccessful—four ATF agents killed and 20 wounded in the first raid, and then 70 to 80 civilians—women and children, elderly—killed in the second raid.

So we have to, as a Congress, look at this action. And you have to wonder about the actions of the ATF, which is our job here, in Congress, to oversee—not Mr. Koresh but the acts of the ATF—and their bosses at the Department of Treasury, and even into the White House in this administration, who ultimately is in control of the ATF through the Department of Treasury. So that is why we are entitled to look at these records.

One has to also question why Mr. Koresh was not caught outside the compound or lured outside the compound. Being the charismatic type of leader he was, one has to think that his absence from the compound would make it much easier to immediately serve a search warrant after he was arrested and taken downtown. One has to wonder about these things.

And also we have to wonder, when the element of surprise was gone, why the raid went ahead, notwithstanding?

As I mentioned yesterday, I am still concerned deeply about what was the necessity. What was the compelling reason that the ATF had to make this first dynamic raid on that particular day, again, particularly when the element of surprise was lost.

And, as a former U.S. attorney, as Mr. Barr is, I know Mr. Bassett is a former FBI agent, Mr. Sanders is a former ATF agent, probably would like to lay some cards on the table. We are all aware, very much, of the interagency rivalry that exists, particularly with the FBI, among other law enforcement agencies. And I think the turf battles that occur with ATF and the FBI and often times, very frankly, who could get the most jackets out there on the scene for the cameras whether they were ATF on the back or whether they were FBI on the back.

And in light of the circumstances that existed at this time, where the Department of Justice had no Attorney General; the FBI, who is under the Department of Justice, had Judge Sessions who was under attack at that point for alleged misconduct; and the ATF had a Director at that time, Mr. Bentsen, and this was their action. I wonder if in any of these circumstances, did any of this interagency rivalry come into play? The effect of an impending budget debate. There was talk, in those days, of doing away with the ATF, of merging it with FBI.

Was there a need, Mr. Sanders, at that point, if you know, for the ATF to have this type of dynamic entry, this type of show that perhaps, at some level in the chain of command, whether it was in Washington or in Texas, may have justified the need to go in on that day, February 28, 1993, in the manner that they chose?

Mr. SANDERS. I think I can best answer that—I spoke with a number of agents who were still on the job following the aborted raid of Waco. The general impression that I got was that this was

something that was forced on the field by headquarters, by the bosses. Just prior to that there was much evidence that this was a very troubled agency.

Mr. BRYANT of Tennessee. A very troubled agency?

Mr. SANDERS. Very troubled agency.

Mr. BRYANT of Tennessee. Would you speak so that everyone can hear you, a little closer to the microphone.

Mr. SANDERS. The agents, themselves, I think are just great. You should have a ticker tape parade for them. They are splendid. They are fine. They are the best there is.

But there was evidence of a very troubled agency. For one, in October, some of the very fine black agents had filed a class action suit charging that they had been discriminated against in work assignments, in discipline, in the very oppressive nature of the job.

In January 1992, "60 Minutes" did a nationwide broadcast of sexual harassment. Waco came between that and the appropriations hearings which were scheduled in early March.

Mr. BRYANT of Tennessee. Were part of those "60 Minutes" sexual harassment allegations, did they come out of this particular office in Texas or its immediate supervisors?

Mr. SANDERS. I really do not know. They were basically all over the country, sexual harassment cases which were brought to the view of the Nation. And the ATF and the Director of ATF looked like fools in those hearings.

So that was present. And in the opinion of the agents, the planning for Waco and the manner in which it was done was done for the purpose of publicity.

Mr. MCCOLLUM. Mr. Bryant, your time is up. Mr. Sanders, we have been asked to clarify when you said, October, what year were you referring to?

Mr. SANDERS. That was October 1992.

Mr. MCCOLLUM. Thank you, very much.

Thank you, very much, Mr. Bryant. I think the only other person left is Mr. Blute. Mr. Blute, you are recognized for 5 minutes, if you wish.

Mr. BLUTE. Thank you, Mr. Chairman.

At this time, I would yield my time to the gentleman from Indiana, Mr. Buyer.

Mr. BUYER. Yes, thank you, Mr. Blute.

I have just a few brief questions, quickly.

Mr. Ishimoto, in your report, you talked about the inexperience and the crisis management operating planning skills for a large-scale operation such as Waco. It was clearly evident in the planning and execution of the raid.

Now, as I understand from your experience, you were a commander with the Iran hostage, back in the late 1970's? Or was that correct?

Mr. ISHIMOTO. In 1980, sir.

Mr. BUYER. In 1980. And were you the commander of that operation that took them into the desert?

Mr. ISHIMOTO. No, sir, I was the intelligence officer, but I had command of a road security team.

Mr. BUYER. But as I understand with a lot of different operations that there are go and no-go procedures, are there not?

Mr. ISHIMOTO. Yes, sir.

Mr. BUYER. And with regard to that hostage rescue, for which you are involved with, which America is also fully informed of, there was a no-go procedure. That being that if it went under six helicopters it was a no-go. And that there were six helicopters that landed in the desert. One had hydraulic problems and there was a call to a no-go and you aborted the mission. And then as it began to fly off you had the crash and everything that had happened afterwards. Is that correct?

Mr. ISHIMOTO. That is correct, sir.

Mr. BUYER. So go, no-go procedures. In your review, did ATF—and they are participating in this close combat support—did they have go, no-go procedures?

Mr. ISHIMOTO. Yes, sir, but of a very—I am looking for the appropriate words, I will just call them an—unsophisticated variety, and they did not address the right things to look for to make it a go.

For example, finding the men working outside and getting a report, either from Cavanaugh or Rodriguez that that situation was in existence.

Mr. BUYER. An unsophisticated variety. That is a very tactful, you are being very tactful today. In your report you were not as tactful because you said their lack of contingency plan basically was “an oh-shit plan.”

Is that basically what you said? You can run from the building, take cover, oh shit, it is coming.

Mr. ISHIMOTO. Could I expand on my comments a little bit?

Mr. BUYER. Please, go ahead. I mean I know what a no-go is. If it turns into an, Oh, my God, that is——

Mr. ISHIMOTO. Those were the words that were given to us but I recall that one of the last times I saw Mr. Bassett, prior to——

Mr. SCHUMER. A point of parliamentary inquiry?

Mr. MCCOLLUM. Would you state your point, please?

Mr. SCHUMER. Do we have to make a warning to the children of America that profanity is being used here, the way we did yesterday?

Mr. BUYER. I do not see any exploitation of children right now, so——

Mr. ISHIMOTO. But I go back to 1981, where the FBI, at that point in time, there were some in their administration that did not believe that they needed a hostage rescue team. At a particular exercise, Mr. Bassett found out about a baloney bomb and found out what go/no-go situations could have meant on the side of the FBI who was using a regional SWAT concept. Now, fortunately they were able to determine the need for more sophisticated operation like the HRT and unfortunately the ATF did not have that opportunity and training.

Mr. BUYER. All right. See, what is so vitally important about these hearings and why these hearings are important to strengthen law enforcement is that when we have—those who are operating in the field—the law enforcement agent on the field needs to also have the confidence that his supervisors are making decisions that will save lives.

And part of that also is contingency planning and operations, is that correct, sir?



Mr. ISHIMOTO. Yes, sir.

Mr. BUYER. And when we have such—the words that you used—the unsophisticated forms of variety of plans that are never written, there is a lack of confidence. And I think we need to make sure that when we have plans in the future that we have that strengthened to law enforcement that our officers in the field are confident that their supervisors are making good judgment decisions. Would you agree with that, sir?

Mr. ISHIMOTO. Yes, sir. And that is why I placed emphasis in my report on the need for improved training.

Mr. BUYER. So, as you were aware, there were not any no-go procedures?

Mr. ISHIMOTO. There were go/no-go procedures. They talk about if they were compromised what would happen. They talked about if they believed, they fully believed that they lost the element of surprise then they should back off.

Mr. BUYER. And the last question, who, in Washington, had the authority to call off the raid?

Mr. ISHIMOTO. I did not hear the last part.

Mr. BUYER. Who, in Washington, had the authority to call off the raid under a no-go procedure?

Mr. ISHIMOTO. I think ranging from the Director, Mr. Higgins, at that point in time, down through Mr. Hartnett, both of them certainly had that authority, as well as Mr. Chojnacki and Sarabyn in the field.

Mr. BUYER. All right, thank you, Mr. Chairman. I appreciate your answers.

Mr. MCCOLLUM. Thank you, very much.

Ms. Slaughter, you have come in, would you like 5 minutes?

You are recognized.

Ms. SLAUGHTER. Thank you, Mr. Chairman.

Gentlemen, I know that you are the hindsight team and what you think might have been done a little bit better. And I am sure there were many things that could have been. But I want to ask you, again, a very simple question and it is this: Has anything that you have seen or heard or read about this raid given you any idea that there is justification for the killing of four ATF officers by David Koresh and his followers?

Mr. ISHIMOTO. Ma'am, Mr. Taylor asked a similar question and our response—

Ms. SLAUGHTER. I am sorry, I was out of the room with a constituent. But I would like to hear it again.

Mr. SANDERS. The answer is, no. A resounding, no.

Mr. COONCE. No, Ma'am.

Ms. SLAUGHTER. Well, you know it is easier for us, and the rest of you agree that there is nothing in law, at any point, that when law officials, officials of the Government come to the door, is there any grounds whatever on whence the person inside that door, in that building has the right to shoot legal officers, really doing their duty?

Mr. ISHIMOTO. No.

Mr. COONCE. No, ma'am.

Ms. SLAUGHTER. I think I would like to talk to you about the growing militarization which obviously is a big problem here. Is it

not true that the amount of firepower and sophisticated weaponry, and the arsenals that criminals have now, and psychopaths like David Koresh, require you to use everything at your disposal to try to fight that kind of menace?

Mr. ISHIMOTO. I guess my response would be ATF, as well as other law enforcement, tries to use the appropriate amount of force.

In other words, certainly nobody considered strafing the compound with an F-16 fighter or ramming it with bulldozers, if not tanks on February 28. That would not have been a judicious use of force but certainly would have gotten the mission accomplished in some way.

Ms. SLAUGHTER. Well, the chain of activity seems to be that the local law enforcement asked the ATF to come in. And I know that one of our bones of contention is, did the ATF ask the Department of Defense to come in because of the methamphetamine lab?

Is it your opinion, all of you, that there was no evidence there of that laboratory?

Mr. SANDERS. Yes.

Mr. ISHIMOTO. Yes.

Ms. SLAUGHTER. There was nothing there to justify the use of the higher military people?

Mr. BASSETT. Ms. Slaughter, my knowledge in that regard is limited to what I have read in the Treasury report, but I am aware of no evidence of narcotics being present.

Ms. SLAUGHTER. Let me yield for a moment to my colleague from New York, Mr. Schumer.

Mr. SCHUMER. I thank the gentle lady and I just would like to make one other point related to this. You know, this was a search warrant so you had to go to the compound. Serving a warrant off the premises would not make much sense. Do you agree with that, Mr. Ishimoto?

Mr. ISHIMOTO. Yes, in hindsight ATF now knows that Koresh was leading the compound, but at that time they did not know that factually, and therefore——

Mr. SCHUMER. Exactly. And second, there is a lot of talk of why dynamic entry rather than siege was used, the siege approach was used.

In reference to a question that someone on the other side asked, you had explained briefly and I would like to give you another opportunity to go over that. Both Mr. Ishimoto and Mr. Morrison are experts here, who looked at the report.

Would you please explain why siege, when planning this raid, would not be the preferred method?

Mr. ISHIMOTO. ATF was very much concerned with the previous incident where they, in conjunction with the FBI, seized the Covenant Sword and Arm of the Lord compound in Arkansas and a considerable amount of evidence was destroyed, subsequently resulting in lesser amount of——

Mr. SCHUMER. And they were criticized for that, right?

Mr. ISHIMOTO. Yes.

Ms. SLAUGHTER. Could I reclaim my time, just before it is up, please, Chuck? Because I wanted to get back again to the serving of the search warrant.

It is all of your judgment you, particularly, Mr. Morrison who is also, himself, in law enforcement, that a search warrant needs to be served on the premises that have to be served? If you were to serve the person, who was responsible for those premises, outside, let us say, while he is jogging in the street, he has the opportunity to go home and destroy the evidence that you may be searching for?

Mr. MORRISON. That is basically the difference between an arrest warrant and a search warrant. The purpose here is to seize evidence of illegal activity. In this case it was quite well established.

Ms. SLAUGHTER. And that was the purpose of trying to serve the search warrant, was it not?

Mr. MORRISON. Yes.

Ms. SLAUGHTER. Thank you.

Mr. MCCOLLUM. Thank you. Your time is up and Mr. Souder, you are in, if you would like, 5 minutes.

Mr. SOUDER. Thank you. I will yield 1 minute to Mr. Barr.

Mr. BARR. Thank you.

Mr. Sanders, if I could just follow up on our discussion previously, after looking at those memos. I would further draw your attention to the fact that one of the agents who was fired, terminated, and then rehired; as a part of the rehiring of that agent there was a settlement reached between the Government and attorneys for the former agent and now current agent.

And as part of that settlement the settlement specifically requires that files be destroyed. Now, presumably these relate to the matters we were talking about earlier, the shooting review, what went wrong, and so forth.

And I just want to make sure that, in the context we are talking about here, you, I think, mentioned the possibility of this raising in your mind an obstruction of justice charge with regard to directives not to gather evidence, not to take notes, not to conduct interviews as a part of the Government's effort in the aftermath of the initial shooting.

Mr. SANDERS. Yes, sir.

Mr. BARR. Thank you. I just wanted to clarify that. I agree with you. Thank you. I yield back my time to Mr. Souder.

Mr. SOUDER. I yield 1 minute to the Chairman, Mr. Zeliff.

Mr. ZELIFF. Thank you for yielding.

In my line of questioning to all of you as to whether there was a drug connection or not, I just want to add one last thing if I could. That is to introduce, Mr. Chairman, into the evidence here a document that is actually the operational order to give—that is put out by the Pentagon—to give the Department of Defense assistance.

I refer to the second page, particularly. "The suspect group is an extremist cult survivalist organization. Intelligence indicates an active methamphetamine lab and deliveries of the required chemicals to produce the synthetic methamphetamine."

This is the operational order to give DOD assistance and I would appreciate your expert opinions in terms of whether there was or was not a drug connection. I would just like to submit this for evidence.

Mr. MCCOLLUM. Without objection, it is so received.

[Information not received by time of printing.]

Mr. TAYLOR. Mr. Chairman, you said without objection.

Mr. MCCOLLUM. Well, normally everything is received into evidence.

Mr. TAYLOR. I would reserve the right to object. I would ask for clarification in fairness.

Mr. MCCOLLUM. Sure. Reserving the right to object.

Mr. TAYLOR. Reserving the right to object, I would ask for a clarification. Is this a DOD order or was this a Texas National Guard order, since these were Texas National Guard aircraft?

Mr. MCCOLLUM. This was a fair question. This was a DOD order.

Mr. TAYLOR. Thank you, very much.

Mr. MCCOLLUM. Without objection it is admitted.

Mr. Souder, you still have time.

Mr. SOUDER. With that I will yield the balance of my time to Mr. Shadegg.

Mr. SHADEGG. Thank you, very much. I have a very brief amount of time here.

Mr. Ishimoto, you made a point earlier that there was a review process in the Department of Defense for determining if there was a drug nexus. That it was used in this case and that the Department of Defense has standards.

I think there is some doubts about the evidence that was given to the Department of Defense. I just want to know if you find it upsetting that they may have been misled and if you are aware of a memo, written by the Department of Defense, by the Army dated September 9, 1993, where, in discussing this, and referring to the Waco incident, they say, in that instance we, meaning the U.S. Army, were persuaded to provide BATF free training with the allegation, never confirmed, proven, or even acknowledged, that it was for "suspected methamphetamine laboratory."

Mr. ISHIMOTO. Sir, would you accept a suggestion on my part that you follow those questions up with the military people that are here, too?

Mr. SHADEGG. I fully intend to do that. It appears to me they were seriously misled and that is what they are saying here.

Mr. ISHIMOTO. OK. And I have problems with that because I am convinced that ATF did not do the misleading. That these were, in fact, people internal to the military and to the Texas Governor's office.

Mr. SHADEGG. This suggests they were—Mr. Bassett, let me turn to you. You did not get a chance to answer my earlier question. I had asked, is there ever a circumstance in which, when you have been offered a chance to gather intelligence by having an agent go inside a location where you wanted to make an arrest and conduct a search, you have been offered that, where you would not make any attempt to take up that offer, as apparently occurred here?

Mr. BASSETT. I cannot think of any situation like that, no.

Mr. SHADEGG. Thank you, very much.

I yield back the balance of my time.

Mr. MCCOLLUM. Well, thank you, very much, Mr. Shadegg and Mr. Souder.

We are now, I think, complete having gone through the 5-minute rule for everybody who wished to take 5 minutes who are members of either of these two joint panels.

I want to thank the witnesses on this particular panel here, today. You have endured quite a period of time, but your contributions are very important to helping the public and us understand the entire process at Waco.

Mr. Bassett.

Mr. BASSETT. Mr. McCollum, may I have the opportunity to make a very short statement that is directly relevant to both the Treasury and the Department of Justice?

Mr. MCCOLLUM. Yes, you may. I will yield you that opportunity.

Mr. BASSETT. Thank you, sir. I have reduced it to writing to minimize the time. Both the Treasury and Department of Justice reviews of the Waco incident have contained recommendations concerning the need for both ATF and FBI to improve their procedures for eliciting advice from outside experts. Shortly after the Waco event an informal affiliation of academics, professionals, and former senior government officials, known as the Critical Incident Analysis Group, formed at Michigan State University.

The group's intent is to conduct collaborative analysis of significant incidents, enrich public discussion of crisis events, and assist crisis managers when possible.

Last year, the FBI expressed an interest in our group resulting in an ongoing exploration with the newly formed Crisis Incident Response Group of the FBI, focusing on the feasibility of developing university-based advisory groups which can support the FBI and potentially other law enforcement agencies with a network of known, highly qualified consultants in future complex incidents, such as Waco.

In our efforts, thus far, we have enlisted some very distinguished Americans who have volunteered to assist in this effort and we are very optimistic that a workable advisory network can be established which will enhance FBI and potentially other law enforcement capabilities.

Realizing the time constraints on this committee, I would request permission from the committee to assemble materials providing an overview of our progress to date for later consideration and inclusion in the hearing record.

Mr. MCCOLLUM. We would be very glad to receive that, Mr. Bassett.

Now, I want to thank all the members of the panel for coming here today and being with us. We are now going to be in recess until 2:15, pending any vote that might be on at the time.

Mr. BARR. Mr. Chairman.

Mr. MCCOLLUM. Mr. Barr, before we recess.

Mr. BARR. Mr. Chairman, could I ask unanimous consent that the documents that Mr. Sanders reviewed, which I handed him to either be included in the record today or referenced as those that I included in the record today?

Mr. MCCOLLUM. Without objection, so ordered.

The subcommittees, jointly meeting now will be in recess until 2:15 p.m.

[Recess.]

Mr. McCOLLUM. The hearing of the joint subcommittees will come to order. At this time, I would like to call the witnesses for panel B, who have been waiting quite a while for the opportunity to have this hearing and we apologize for the wait, gentlemen.

I will call you in the order you are on my list, but obviously you have found where the name tags are down there. Then I will swear you in collectively afterwards.

Ambassador H. Allen Holmes. Ambassador Holmes is the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. The Department of Defense Counter Drug Policy Office falls under his leadership. Mr. Holmes previously served as Ambassador to Portugal and as Ambassador-at-Large for Burden Sharing.

If I get this right, Maj. Gen. John M. Pickler, U.S. Army. General Pickler was the Commander of Joint Task Force Six, the military counterdrug force along the southwest border.

Brig. Gen. Walter Huffman, U.S. Army is the Army's Assistant Judge Advocate General for Civil Law. As such, he is the second-highest ranking lawyer in the U.S. Army.

Mr. Chris Crain is a Special Project Coordinator with the U.S. Army Special Operations Command at Ft. Bragg, N.C.

Lt. Col. Philip Lindley was the former Deputy Staff Judge Advocate for the U.S. Army Special Forces Command at Ft. Bragg, NC.

Maj. Mark Petree, U.S. Army was formally attached to the Third Division, Third Brigade of the Army's Special Forces Group at Ft. Bragg, NC.

S. Sgt. Steve Fitts, S. Sgt. Robert Moreland, and Sfc. Chris Dunn were each attached to the U.S. Army Third Special Forces Group at Ft. Bragg, NC, in early 1993.

I know you all are already standing. If you would raise your right hand, I would like to swear you in.

[Witnesses sworn.]

Mr. McCOLLUM. Please be seated, gentlemen. Before we begin, let the record reflect that all of the witnesses answered in the affirmative. Before we begin the questioning of this panel I would like to announce that because we did not get unanimous consent this morning we are now working under the 5-minute rule. As a result we will have to drop from today's schedule the final or fourth panel. And we have been notifying those panel members of that fact.

We will resume the hearings after the completion of today's testimony from this panel and panel C, in the morning, with the panel that is dropped from tonight.

It will mean also that the schedule will slip for those of you who are following what we have done. And the scheduled panel, the second panel for tomorrow, will be moved to the beginning of the week on Monday morning, when we resume these hearings. And we believe that by that time we will be back on schedule and hope that it all works well.

At this point in time, under the 5-minute rule, the chairman would normally begin the questioning. I yield my 5 minutes, for that purpose, to Mr. Buyer.

Mr. BUYER. Thank you, Mr. Chairman.

I am not able to see these names all very well. If someone could help me out? Thank you.

Let me first begin the line of questioning with Brig. Gen. Huffman.

Earlier, in a opening I gave this morning with regard to the Posse Comitatus Act, just to refresh my colleagues' memory, the posse comitatus statute is a criminal statute that states that it is a crime to use any part of the Army or Air Force to enforce the laws of the land unless authorized by Congress or the Constitution. Is that your understanding, General Huffman?

**STATEMENT OF BRIG. GEN. WALTER B. HUFFMAN, U.S. ARMY,  
ASSISTANT JUDGE ADVOCATE GENERAL FOR MILITARY LAW  
AND OPERATIONS**

General HUFFMAN. Yes, Congressman, that is the basic reading of the Posse Comitatus Act. If I may interrupt for one second, Congressman, to say that I have submitted a written statement outlining the provisions of the Posse Comitatus Act which I believe has been provided to all of you and I would ask if that could be made a part of the record.

[The prepared statement of General Huffman follows:]

PREPARED STATEMENT OF BRIG. GEN. WALTER B. HUFFMAN, ASSISTANT JUDGE  
ADVOCATE GENERAL FOR MILITARY LAW AND OPERATIONS

Thank you for the opportunity to appear at this joint hearing on behalf of the Department of Defense. My role, and my goal today, is to answer your questions on the Posse Comitatus Act. To assist in this regard, I would like to begin by providing a framework of the Act and its general application to the incident at issue.

The Posse Comitatus Act (18 U.S.C. § 1385) was enacted in 1878 to prevent the use of soldiers in civilian law enforcement roles in the South during the post-Civil War Reconstruction Period. In order to preserve the American tradition of military subordination to a strong civil authority, the Act created a general prohibition against use of military personnel to execute the civil laws.

The Act states that "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both." This Act prohibits the execution of all civil law -- federal, state, and local.

The Act only prohibits the use of military personnel. It prohibits use of the following personnel to execute civil law:

Active duty personnel in the Army and Air Force. The Act does not apply to off-duty military personnel acting in a private capacity.

Reservists on active duty, active duty for training, or inactive duty for training. The Act does not apply to Reservists if they are not in one of these statuses.

National Guard personnel in Federal Service (Title 10 status). The Act does not apply to National Guard in Title 32 or state active-duty status. At Waco, the Guard personnel involved were in a Title 32 status under state command and control.

In 1981, in 10 U.S.C. §§ 371-381, Congress specified types of military support that may be provided to civilian law enforcement agencies (CLEA) without violating the Posse Comitatus Act. These statutory provisions include:

Allowing the Secretary of Defense to provide equipment and facilities to any Federal, state, or local civilian law enforcement official for law enforcement purposes (10 U.S.C. § 372);

Allowing military personnel to train civilian law



enforcement personnel in the operation and maintenance of any equipment, including equipment made available for law enforcement purposes (10 U.S.C. § 373);

Allowing military personnel to provide expert advice to civilian law enforcement personnel (advice must be relevant to the purposes of the provisions of 10 U.S.C. §§ 371-380) (10 U.S.C. § 373);

Allowing military personnel to provide maintenance support to Federal, state, and local civilian law enforcement authorities for equipment, to include equipment provided under 10 U.S.C. § 372 (10 U.S.C. § 374(a));

Allowing military personnel to be made available to any Federal, state, or local law enforcement agency to operate equipment, but only to the extent that such support does not involve direct participation by such personnel in civilian law enforcement operations unless otherwise authorized by law (10 U.S.C. § 374(c)); and

Prohibiting use of members of the Army, Navy, Air Force, or Marine Corps to search, seize, arrest, or perform other similar activities (10 U.S.C. § 375). (None of the preceding sections limit support to CLEAs to support for counterdrug operations.)

Additionally, in interpreting the Posse Comitatus Act, courts have applied three separate tests over the years:

Did civilian law enforcement officials make direct active use of military personnel to execute the laws?

Did use of the armed forces pervade the activities of civilian law enforcement agencies?

Did military personnel subject citizens to the exercise of military power that was regulatory (controls or directs), proscriptive (prohibits or condemns), or compulsory (exerts some coercive force)?

Congress addressed the direct active use test in the enactment of the Military Support for Civilian Law Enforcement Agencies statutes by prohibiting search, seizure, arrest, or similar activities (e.g., stop and frisk) by military personnel. 10 U.S.C. § 375. The other two court-developed tests for Posse Comitatus Act violations focus on control. If the military is only providing indirect support to a CLEA-controlled

action, there is no control and no violation. United States v. Yunis, 681 F.Supp. 891 (D.D.C. 1988); Hayes v. Hawes, 921 F.2d 100 (7th Cir. 1990); United States v. Kahn, 35 F.3d 426 (9th Cir. 1994).

In light of current law, based on my review of the events in question, and the fact that the National Guard was operating in a Title 32 status under state command and control, I find no violation of the Posse Comitatus Act. Also, I would note that my view concerning the legality of the support provided does not depend on a drug nexus underlying those events.

Thank you for your attention. I would be happy to answer your questions.

Mr. MCCOLLUM. I would like to ask all of the witnesses to note that even though the microphone may be near you, you will need to direct it to you since we do not have enough for everybody, turn it as it is your turn to answer.

Thank you very much.

Mr. BUYER. I would also note that section 375, here, of title 10, prohibits military personnel from conducting search, seizure, arrest or other similar activity unless authorized by law.

You are also familiar with that section, are you not, General?

General HUFFMAN. I am, Congressman.

Mr. BUYER. Thank you. These statutes, the Posse Comitatus and this, they apply only to the active-duty military and not to the National Guard when under State control, is that correct?

General HUFFMAN. Yes, sir.

Mr. BUYER. The National Guard, as I understand it, they have three separate statuses under the law. Would you please briefly explain what they are and whether the National Guard comes under the posse comitatus statutes, under each of those?

General HUFFMAN. Three potential statuses for the National Guard. One is title 10 status, that is active duty when they are basically federalized. If that is the case, the Posse Comitatus Act does apply to them. A title 32 status, State active duty status, which would not leave them under the Posse Comitatus Act. In title 32, for example, where they are being funded by Federal funds, counterdrug funds. Last is the pure State status in which the Posse Comitatus Act does not apply to them either.

Mr. BUYER. Are you familiar with an after-action report by the Texas National Guard? Have you ever seen the afteraction report of the Texas National Guard?

General HUFFMAN. No, sir, I have not.

Mr. BUYER. I want to make you aware, though, that in their afteraction report, that what we have here is on 14 January 1993—this is an afteraction report and it is drafted by the Adjunct General of Texas—and the subject of the afteraction report is the Texas National Guard Counter-Drug Support in Waco, TX.

And on 14 January 1993, there were aerial photographs that were taken by an RF-4, a Phantom F-4 aircraft from the Alabama National Guard. Were you aware that that had taken place?

General HUFFMAN. Yes, sir.

Mr. BUYER. Now, what I have here is this is a model of a Phantom F-4. Now, what we have here is that you describe that we got three different statuses. We have got the National Guard when they are on title 10, federalized; we have got the National Guard when they are under State control on their own funds; and then we have that middle status when we have the Texas National Guard under State control, using Federal funds in support of a Federal mission.

And that is what we had at Waco, did we not, was the middle?

General HUFFMAN. The National Guard was, yes, being paid with Federal funds under title 32.

Mr. BUYER. But under State control?

General HUFFMAN. Under State control, correct.

Mr. BUYER. Claiming to be outside the Posse Comitatus Act?

General HUFFMAN. By law, being outside the Posse Comitatus Act, yes, sir.

Mr. BUYER. So what we have here, ladies and gentlemen is that we have got this statute, a matter of policy of our land to try to keep a separation between military and local law enforcement. But now what we have learned is that there are also memorandums of understanding between governors. So what we have is the Adjutant General in Texas getting on the phone and calling Alabama and Alabama sends an F-4 across State lines from Alabama into Texas.

Now, my question to you, General, does this begin to ask questions? Are we talking about violations of Posse Comitatus Act or not? Or are we into such a gray area here that it is really understandable why the American people are beginning to say, gee, why is the military involved in this one?

General HUFFMAN. Taking the last part of your statement first, if I could, Congressman, it is easy to understand why the American people, lay persons watching aircraft with U.S. Army or U.S. Army National Guard markings do not make a differentiation, nor should they have to. It is our responsibility to stay within the law.

The second part of the question is your address to this action as being in a gray area. Certainly in this statute, as in all other statutes that the courts have interpreted there are some gray areas, but this is not one of them, Congressman. It is clear that the Posse Comitatus Act does not apply to National Guard forces who are under State command and control, and that was the case here.

Mr. BUYER. Thank you.

Mr. MCCOLLUM. Mr. Buyer's 5 minutes is up.

Mr. Schumer has just walked in. Should I give it to Mrs. Thurman? Mrs. Thurman, you are recognized first, 5 minutes.

Mrs. THURMAN. Thank you, Mr. Chairman.

Colonel Lindley, after Mr. Crain notified you of the JTF-6 request for the ATF mission, you had some very heated arguments with JTF-6 attorneys. They even got personal according to your memo.

Could you describe the nature of your concerns to us?

**STATEMENT OF LT. COL. PHILIP LINDLEY, FORMER DEPUTY STAFF JUDGE ADVOCATE, U.S. ARMY SPECIAL FORCES COMMAND, FT. BRAGG, NC**

Colonel LINDLEY. The nature of the concerns first expressed in the memo, Ma'am?

Mrs. THURMAN. Yes.

Colonel LINDLEY. There were, as the operation came to me, there were three areas of support which were requested. One was a review and a scrub, that is an analysis of the mission that had already been planned.

The second area that we were requested for support included medical coverage in close proximity to whatever location this was. I did not know at the time any of this was related to any sort of activity. It was a normal JTF-6 mission as far as it came down.

The third thing was requesting assistance in developing rehearsal sites and constructing those rehearsal sites.

The first two issues that came up, the review and the scrub of the operation plan centered on the team that was present out

there, and the review of a discriminating fire plan. The second issue dealt with the medical personnel that were present there, and being directly involved in potential searches of individuals coming through and the collection of evidence, as well as some liability issues associated with the treatments of the civilians, if you will, that were on the objective.

Mrs. THURMAN. So do you believe your concerns were resolved? Or how were they resolved? I mean—

Colonel LINDLEY. Ma'am, they were resolved satisfactorily by the time all this got done.

Mrs. THURMAN. OK.

Sergeants Moreland and Dunn, let me just give you an opportunity here. It has come to my attention that there have been some statements made and some tabloids, whatever, that you were there or you had something to do with this. Did you provide any assistance to the ATF that went beyond the orders that you were given?

**STATEMENT OF S. SGT. ROBERT W. MORELAND, U.S. ARMY  
THIRD SPECIAL FORCES GROUP, FT. BRAGG, NC**

Sergeant MORELAND. No, ma'am, I did not.

Mrs. THURMAN. Have you been trained in close quarters combat and did you provide this training to the ATF?

Sergeant MORELAND. No, ma'am, I did not.

Mrs. THURMAN. And did you, in any way, provide illegal assistance to the ATF during this raid?

Sergeant MORELAND. No, ma'am, I did not.

Mrs. THURMAN. And were you in Waco, at the compound, in the compound on February 28, 1993?

Sergeant MORELAND. No, ma'am, I was not.

Mrs. THURMAN. OK. And if I could have Sergeant Dunn answer the same questions.

**STATEMENT OF SFC. CHRIS DUNN, U.S. ARMY THIRD SPECIAL  
FORCES GROUP, FT. BRAGG, NC**

Sergeant DUNN. I was not in Waco, ma'am. I did not teach CQB either.

Mrs. THURMAN. And you did not provide any illegal assistance or—

Sergeant DUNN. No, ma'am.

Mrs. THURMAN. OK. General Huffman, let me ask you, what kind of evidence would you have to have to come in on Posse Comitatus? What kind of evidence would somebody have to give you, do you think, to be able to go or to provide your service, or whatever? I mean is there something written? Is there, I mean, what kind of evidence would they give you?

General HUFFMAN. Are you asking, ma'am, what procedures are gone through when someone makes a request for equipment or support that might have a Posse Comitatus Act issue involved in it?

Mrs. THURMAN. Yes, sir, that is it.

General HUFFMAN. There are various levels of approval of this type of support depending on what kind of support is being asked for. I think I would like to defer this question, if I could, to Ambassador Holmes.

Mrs. THURMAN. That would be fine.

General HUFFMAN. Ambassador Holmes thinks I should take the question. [Laughter.]

Mrs. THURMAN. Well, I can tell you one thing, I cannot answer it, that is why I am asking you.

General HUFFMAN. I think it is a wonderful idea and I will try to answer it. Now, the type of evidence, to use your term, that you would need to determine whether the support requested was legal or not, would depend on what kind of support is being requested. Some type of equipment can be approved at a very low level on a mere request by another Federal agency that they need this to get the job done.

Lethal equipment requires a much greater showing and a much higher level of approval. It is a fairly common sense, I guess, approval process but it has a lot of different elements to it.

Mr. MCCOLLUM. Mrs. Thurman, I think your time is up.

Thank you.

Mr. Zeliff for 5 minutes.

Mr. ZELIFF. I will be happy to yield my 5 minutes to Mr. Buyer.

Mr. BUYER. Thank you, Mr. Zeliff.

Let me go back to General Huffman for just a second.

General, is it not true that as long as the military does not become directly involved in search, seizure, arrest that really military personnel can actually provide a lot of this equipment, facilities, training and advice, and it is not necessary to be this drug nexus?

General HUFFMAN. That is correct, Congressman. Both the Posse Comitatus Act, itself, and 10 U.S.C., sections 371 through 381, enacted by Congress in 1981, allow the provision of many different kinds of support to civilian law enforcement agencies by the military—training, equipment, expert advice. And the principal prohibition, as you mentioned, sir, is that the military is not to be involved in arrest, search or seizure or similar activities such as a stop and frisk.

Mr. BUYER. But the real question here really comes down, if they have the drug nexus, perhaps they would not have to do some of the reimbursement, is that correct?

General HUFFMAN. The drug nexus provides a specific type of reimbursement. It is not, as you said earlier, sir, required for the provision of the support itself. But even under the Economy Act, which is one of the acts one would turn to, to provide support to another Federal agency, even a civilian law enforcement agency, there are waivers of reimbursement under various standards.

Mr. BUYER. Mr. Crain, you took the initial phone call from JTF-6 from the ATF's request for military training related to the raid on 3 February 1993, is that correct?

**STATEMENT OF CHRIS CRAIN, SPECIAL PROJECT COORDINATOR, U.S. ARMY SPECIAL OPERATIONS COMMAND, FT. BRAGG, NC**

Mr. CRAIN. Yes, I did.

Mr. BUYER. And when you received that phone call you had some concerns about the support that was requested, is that correct?

Mr. CRAIN. I did, sir.

Mr. BUYER. Which you then immediately contacted Lieutenant Colonel Lindley, the Deputy SJA, the U.S. Army Special Operations Command to review the request, is that correct?

Mr. CRAIN. Yes, sir.

Mr. BUYER. Is that the right chain of events?

Mr. CRAIN. Yes, sir.

Mr. BUYER. Lieutenant Colonel Lindley, when Mr. Crain came to you to discuss the request from JTF-6, and the concerns that you had and you answered some of them for Mrs. Thurman, you wrote a memo, did you not?

Colonel LINDLEY. Yes, sir. I started a chronology immediately and kept it up through the remainder of the day, sir.

Mr. BUYER. And your memorandum, you actually just kind of sketched it down and we will not pay attention to some of the spelling errors and those kinds of things. [Laughter.]

It is just really you are getting it down for the record, right?

Is that what the MFR is?

Colonel LINDLEY. I kept notes recorded as the events occurred, yes, sir.

Mr. BUYER. I would ask that your memorandum be submitted for the record, if there are no objections.

Mr. MCCOLLUM. Without objection, so received.

[The memorandum was not received by time of printing.]

Mr. BUYER. Your memo detailing your actions of that day and as you indicated, you understood that the mission that was first given to you was not permissible, is that your permission?

Colonel LINDLEY. Well, my initial analysis and what was presented orally to me indicated that there were some problems with it, yes, sir. It was impermissible as proposed.

Mr. BUYER. And then you ended up speaking with some JAG officer from JTF-6, who was not happy with your analysis, is that correct?

Colonel LINDLEY. He called me, that is correct, sir.

Mr. BUYER. He called you?

Colonel LINDLEY. Yes, sir.

Mr. BUYER. What did he call you, he was not happy with your analysis, right?

Colonel LINDLEY. He was not particularly enamored with it, no, sir.

Mr. BUYER. Was not enamored with it. But he did not persuade you to change your legal analysis, did he?

Colonel LINDLEY. No, sir.

Mr. BUYER. What ended up happening was he ended up changing the request, did they not?

Colonel LINDLEY. I never saw any subsequent requests, sir. I was involved in this thing for 1 day and that was it, sir.

Mr. BUYER. So you did not end up seeing an operations order later on?

Colonel LINDLEY. No, sir, no, I did not.

Mr. BUYER. Well, you should know that it was scaled back tremendously and you are to receive a lot of credit for having saved the face of the military and to your compliment, sir.

Let me jump over here to General Pickler. You are the commanding general of JTF-6 at the time of the command specifically de-

signed to provide the military support to law enforcement to the war on drugs on the southwest border of the United States, is that correct?

**STATEMENT OF MAJ. GEN. JOHN M. PICKLER, FORMER  
COMMANDER, JOINT TASK FORCE SIX**

General PICKLER. Yes, sir, that is correct.

Mr. BUYER. In order for soldiers under your command to provide support for law enforcement, your command needed a drug nexus, correct?

General PICKLER. That is correct, sir.

Mr. BUYER. When ATF came to you and said that there is this methamphetamine lab on the compound, did you just accept it on its face value, or did you do some kind of analysis and if there was an analysis, what was it?

General PICKLER. JTF-6 had no reason to doubt the legitimacy of the drug operation and we do not routinely question the veracity of credentialed officials who are duly constituted law enforcement agencies.

However, in this particular case there were a couple of meetings during which the drug connection was discussed. One of those meetings was on February 2, an Operation Alliance, which was the coordinating center for Federal, State and local law enforcement agencies within the southwest border region through which all requests for DOD support were channeled.

And on February 2, there was some evidence of drug connection mentioned. Several things came out in that meeting and came out in a meeting that was conducted by the BATF in Houston at which my JTF-6/J-3 plans officer, Lieutenant Colonel Berthoff, Maj. Mark Petree and several of his special forces team members attended in Houston on February 4 and 5.

The actual call that was made to Mr. Crain when we were informed of the request coming from Operation Alliance to JTF-6, instead of going to the Regional Logistics Support Office for simple equipment support. Operation Alliance had four entities through which they could funnel DLEA requests for military support to JTF-6, the Regional Logistics Support Office, the National Guard, or NORAD, depending upon the nature of the request.

Initially the BATF request, went to the Regional Logistics Support Office. When it became evident that they might not be able to provide all that was asked for and that more was involved, BATF contacted JTF-6. And then we went through our systematic review process. We coordinated with the parent headquarters of Major Petree which was the 3d Special Forces Group. We laid out for the 3d Special Forces Group the kinds of things that ATF was talking about.

My approved execute order did not occur until about February 17, some 2 weeks later, and during an extensive and comprehensive review process.

So that the coordination with Mr. Crain and his coordination with the legal officer in the 3d Special Forces Group was a natural part of that comprehensive review process.



Mr. BUYER. I know my time has just expired. Is the operation order that Mr. Zelif has placed in the record, that was your operation order?

General PICKLER. The one on February 17, 2145 Zulu, I believe is the correct execute order.

Mr. MCCOLLUM. We will clarify that. Mr. Buyer, your time is up. Mr. Schumer, you are recognized for 5 minutes.

Mr. SCHUMER. Thank you, Mr. Chairman.

I want to thank the fine gentlemen from the military for being here and I would say that I am glad you are here because a lot of the mistruths that have floated around that came out from this article in the Soldier of Fortune, which I think a lot of my colleagues are asking questions about and may have been the blueprint for why you folks are called can be debunked.

I mean just the question that my colleague, Mrs. Thurman asked, in Soldier of Fortune, in this article that alleges all these things, it says, you two Sergeants Moreland and Dunn were down there and you obviously were not and their are travel vouchers to prove it.

This is one of the problems some of us have in the way these hearings may have been conducted because you get an article from this kind of magazine, not known for its veracity, and then it becomes just played about again and again. But the good news is that at least we get a chance to answer questions and set the record straight.

Following along that line, I would like to ask a few questions to you, Major Petree. Am I pronouncing your name correctly, sir?

**STATEMENT OF MAJ. MARK PETREE, FORMERLY ATTACHED TO THIRD DIVISION, THIRD BRIGADE, ARMY SPECIAL FORCES GROUP, FT. BRAGG, NC**

Major PETREE. Yes, sir.

Mr. SCHUMER. Thank you.

First, you sat in on the briefings with the ATF in the days before the raid mostly as an observer, is that correct?

Major PETREE. Yes, sir.

Mr. SCHUMER. And, in your opinion, did the ATF agents expect to be met with gunfire when serving the warrant?

Major PETREE. Yes, sir.

Mr. SCHUMER. OK. Did the agents in the days before the raid, in your observations, fear that they were about to be met with armed resistance before the warrant was served? Or did they think that they—I mean there are two choices here. One is that the people in the compound were going to fire back and it would be an armed encounter and the other is it was going to be just as Mr. Ishimoto talked about in the last panel—I do not know if you heard him—that this dynamic entry which ATF usually uses would produce, in all likelihood, no armed resistance.

Major PETREE. What I mean by my answer is that BATF was planning for that contingency that in case they would meet some sort of armed resistance.

Mr. SCHUMER. But what did they think the likelihood was, that is my question.

Major PETREE. I did not really get a feel for that, sir.

Mr. SCHUMER. And finally did you see the ATF agents preparing to raid the compound in a manner which led you to believe that their intention was to shoot first and ask questions later or rather were they simply preparing to serve what they believe was a legal warrant?

Major PETREE. I would have to go with the latter, sir. From what I observed at Fort Hood, TX, watching the rehearsal.

Mr. SCHUMER. Finally, and I think this is a very important point here, there is in my judgment it is absolutely clear that no law was violated, no action was taken that comes close to violating the Posse Comitatus Act or any other law. General Huffman, is that your, do you agree with that?

General HUFFMAN. Congressman, so far as the Army's involvement in this, I would say that is correct.

Mr. SCHUMER. That is correct, that the military, the Army, it is not even close, did not even come close to stepping over any line that might be regarded as violating that law, is that correct, sir?

General HUFFMAN. That is my opinion, yes, sir.

Mr. SCHUMER. Thank you, General.

Then I would make this observation and then I want to ask Ambassador Holmes a sort of big picture question.

And that is that even if, at worst, you know we have heard a whole lot about the methamphetamine that may or may not have been being made on the compound. Assuming it was not, and even assuming that somebody in ATF deliberately misstated that it was, which I believe not to be true, let us make it clear to everybody here that the only consequence of that, there is no consequence that involves any legal violation whatsoever. Mr. Buyer, my colleague from Indiana, says, maybe it should, maybe the law ought to be changed. That is a different issue. But there was no violation of any law and the only consequence, if it was clear that ATF purposefully deceived you folks in saying that there were drugs there would be who would pay for the military equipment, the helicopters and other things that were used. That is clear. There is no dispute about that, as I understand it, is that correct, Ambassador Holmes?

#### **STATEMENT OF AMBASSADOR H. ALLEN HOLMES, ASSISTANT SECRETARY OF DEFENSE FOR SPECIAL OPERATIONS AND LAW INTENSITY CONFLICT**

Ambassador HOLMES. That is essentially correct, Congressman. Let me just say that I think we need to put a little perspective on this. Since 1989, the Congress has directed and urged the Department of Defense to get involved in the war against drugs, and every year has exhorted us more.

Mr. SCHUMER. Mr. Ambassador, my time is running out and I am going to let you answer that, but I want you to answer another thing in line with that. That is this, I agree with you completely. I dismiss as out of hand the kind of paranoid complaints that sees the military as a sinister tool taking over America.

It is my judgment we are paying hundreds of billions of dollars for military types of activities. As long as people are not making arrests on the street, as long as they are not involved in civil law enforcement, but giving advice, and helping other agencies do their job in the drug area for sure, and even in the nondrug area, it

makes eminent sense with all the money we are spending for the military. What is your view Ambassador Holmes?

Ambassador HOLMES. Everything that we are doing in that regard is according to statute and every official that carries out a request has very clear delegated authority from the Secretary of Defense's statutory authority.

Mr. SCHUMER. And finally, you know of no law that was broken in any of these activities, do you?

Ambassador HOLMES. I know of no law that was broken.

Mr. SCHUMER. Did not even come close, did it?

[The prepared statement of Ambassador Holmes follows:]

**PREPARED STATEMENT OF AMBASSADOR H. ALLEN HOLMES, ASSISTANT SECRETARY OF  
DEFENSE FOR SPECIAL OPERATIONS LAW INTENSITY CONFLICT**

As of 20 Jul 95 08.49

Mr. Chairman and Members of the Joint Committee:

Thank you for this opportunity to speak to you today. My purpose is to help the Committees and the American public understand the context and procedures that apply when the Department of Defense provides military support to civil authorities, including law enforcement.

First, I note that the Department's mission of providing support to civilian agencies and local communities is not a new development in this Nation's history. Whether providing assistance subsequent to natural disasters such as Hurricane Hugo in South Carolina or forest fires in the Pacific Northwest, or providing support to law enforcement agencies to combat terrorism and the war on drugs, the Department has long exercised authority granted by both the Constitution and statutes passed by the Congress, to lend its specialized expertise to help solve the Nation's problems.

The Congress has seen fit to enact laws that grant to the Secretary of Defense the authority to provide assistance to law enforcement agencies at all levels of government--Federal, state, and local--in numerous areas. By way of example, the Congress, in 1989, gave the Secretary of Defense expanded authority to assist law enforcement agencies in counterdrug activities. Indeed, the Congress directed the Department to provide the support and it annually appropriates funds specifically designated for the Department's counterdrug support--averaging in excess of \$800 million a year over the last three years alone.

The combined effect of the Secretary's statutory authority to support civil authorities including law enforcement agencies, both in counterdrug activities and otherwise, is that, on an annual basis, the Department responds to literally thousands of requests for support from civil authorities at all levels of government. For example, I am informed by the Department of the Army that, on average, it responds to about 7000 requests annually. In the counterdrug arena, Active and Reserve Component personnel provide support in response to hundreds of requests a year. Joint Task Force Six received just under 3000 requests from fiscal year 1990 through the end of January this year. I would note that the Congress specifically identified in law the types of support we are to provide. In addition, in the last fiscal year, the Department provided over \$260 million in excess property to Federal, state, and local law enforcement agencies. So the support we provide varies--from training members of the Cook County, Illinois Sheriff's Department at the Army Military Police School, to providing excess helicopters to cities in California; from building roads and fences along the Southwest Border for the Immigration and Naturalization Service, to designing computer and communications systems for law enforcement agencies participating in the Gulf States Counterdrug Initiative.

Further, in the past, the Congress has exhorted the Department to provide even more support to domestic law enforcement agencies. Indeed, through Fiscal Year 1994, the Congress each year directed a specific amount of the DoD budget for counterdrug support that would be devoted to support of law enforcement agencies--generally \$40 million per year. Despite our best efforts, committee reports and other legislative history of DoD's counterdrug legislation is replete with language that contends that the Department could do more. And almost daily correspondence from elected officials and law enforcement agencies throughout the Nation urges DoD to provide more assistance.

For each type of support, the Secretary of Defense has established procedures to ensure that the Department's support to law enforcement is carried out consistent with the law. In particular, no commander or other official in any of the military Services may provide support to a law enforcement agency except by clear delegation, through appropriate directives, of the Secretary's own statutory authority. And, in the case of counterdrug support approved by the Commander of Joint Task Force Six, all requests are first screened by Operation Alliance, a joint law enforcement coordinating center before they are submitted to JTF-6 for approval.

That was the situation that existed in late 1992 and early 1993 when law enforcement agencies requested the Department's assistance in their efforts directed at the occupants of the Branch Davidian Compound in Waco. Based on my review to date, to the best of my knowledge, all support provided to the Bureau of Alcohol, Tobacco, and Firearms or the Federal Bureau of Investigation during that time was approved by an authorized DoD official.

I am ready for your questions.

Mr. MCCOLLUM. Thank you, Mr. Schumer. I next recognize Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I just want to comment briefly on my friend from New York's triumphantism in learning that the Soldier of Fortune article contains a lot of nonsense. Do not deny us a share in that triumphantism. As the beauty of the hearings are to bring that out and to bring that out for the country to see and to know what are myths and what are reality.

So I would think the gentleman would cheer that we are having these hearings and we are all getting an opportunity to hear authentically what the facts are.

Mr. SCHUMER. Well, as I said, it is a half cheer, Mr. Chairman.

Mr. HYDE. Well, I will try to get you up to a full cheer.

And having elicited from you the concession that these hearings do have some merit and that all any of us want is the truth and we are getting it and I welcome it, and I yield what time I have left to Mr. Buyer.

Mr. BUYER. Thank you, Mr. Hyde.

It is always interesting that sometimes members always like to talk about conservative conspiracy theorists and nobody recognizes that there are liberal conspiracy theorists.

And they think, well, if there is a panel, it must be a panel because of some type of Soldier of Fortune type magazine. I have never even read or seen the article. I respect this panel. These are heroes here in front of me and I am very proud of your service.

And I think it is important for us to hear from these witnesses so they can explain what exactly was the military involvement and to inform America with regard to the posse comitatus statute and its impact on local law enforcement and that is what this process is.

Where I left off last time, General Pickler, I asked you if that was your operations order. Have you had a opportunity to review it?

General PICKLER. I looked at it briefly and—

Mr. BUYER. And is that your operations order?

General PICKLER. Yes, sir, it matches the date/time group of the operations order I signed.

Mr. BUYER. At the bottom of the ops order, it talks about having the support from some of the highest levels of—let us see, "This operation has the highest interest of BATF, Washington and has been approved at that level."

What does Washington mean?

General PICKLER. Sir, in my opinion the original support request that came into the Regional Logistics Support unit had a heading from the Washington office of the Bureau of Alcohol, Tobacco and Firearms. And my recollection of the events included the fact that, in addition to the BATF representative at Operation Alliance, who was one of the four senior representatives of that organization, it also had endorsement at the Houston office, as well as Washington because all of those appeared to be involved with the request, itself.

Mr. BUYER. All right, when I read your op order there is a lot of mention about the drug nexus, methamphetamine lab. I take it

from your testimony earlier you accepted another Federal agency at face value and it was not your job to question them.

Is that kind of the idea?

General PICKLER. That is correct.

Mr. BUYER. So you accepted it on face value but although you were concerned because of some counsel that was provided by Lieutenant Colonel Lindley and perhaps your own counsel, at the time, and it scaled back.

With what I noticed, you were concerned with your personnel becoming too involved with the training of the ATF and is that why your execute order, issued on February 17, 1993, indicated that the RSU would provide only tactical, which is company level, communications training, emergency medical evaluation training, pickup zone, landing zone training and tactical vehicle dismount training, as well as a range control support, you wanted to narrow it, is that correct?

General PICKLER. We wanted to narrow it, that is correct, sir, due to the comprehensive review process and the systematic approval process that we go through in JIF-6 prior to the approval of an execute order.

Mr. BUYER. Thank you.

Major Petree, you received this execute order from JTF-6, to execute the training at Fort Hood, TX, did you not?

Major PETREE. Yes, sir.

Mr. BUYER. And did that order include reference to an active methamphetamine lab?

Major PETREE. I do not recall, sir.

Mr. BUYER. You do not recall? We will give you an opportunity to read it.

Sergeant first class Fitts, at the time, did you receive an order from Major Petree to go out and do a study on how to take down a methamphetamine lab?

Sergeant FITTS. Sir, we were directed to go out and do research on the dangers of entering a methamphetamine lab.

Mr. BUYER. And how long did your research take?

Sergeant FITTS. Approximately 3 or 4 days.

Mr. BUYER. And what did you do? Did you write a paper?

Sergeant FITTS. Myself and another medic wrote a paper and presented it to Major Petree.

Mr. BUYER. I see my time has expired, and we will come back to this and I hope you read the op order.

Mr. MCCOLLUM. Mr. Scott, you are recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

General Huffman, the military mission and civilian law enforcement mission are different. Can you tell me what training military personnel have in search and seizure law?

General HUFFMAN. Military personnel, other than military police, have very little training in search and seizure, Congressman.

Mr. SCOTT. And when there is probable cause for arrest and when a warrant is valid and when it is not valid, they have very little, if any, training?

General HUFFMAN. Other than the military police, yes, Congressman.

Mr. SCOTT. Civil arrest, who is subject to arrest and how to detain a subject, very little training?

General HUFFMAN. Not areas of military expertise, yes.

Mr. SCOTT. And can you tell me, that it is one of the reasons you do not want military personnel involved in civilian law enforcement because they are not trained as such, is that right?

General HUFFMAN. The reason we do not get involved in arrest, search and seizure or service of warrants is because the law prohibits it, Congressman, but you are right, we do not have the expertise, either.

Mr. SCOTT. Are there other reasons why we would want to keep the military separate, not because it is the law, but just in general, why it is a good or bad idea?

General HUFFMAN. I think, Congressman, if you look to the beginnings of the Posse Comitatus Act, which I think has two bases in history; one of them was it was an attempt in the post-Civil War era, during Reconstruction in the South, to prevent the continued use of Federal troops in the enforcement of civil law. Second, it was a reaffirmation of the civilian control of the military in our country and our history.

Mr. SCOTT. Ambassador Holmes, do you want to comment on this generally why we want to maintain the separation?

Ambassador HOLMES. My own view is that this is basically good government to maintain a clear separation between the military power of the executive branch and law enforcement power of the Attorney General.

Mr. SCOTT. Mr. Chairman, I yield back the balance of my time.

Mr. MCCOLLUM. Thank you, Mr. Scott.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

General Huffman, I believe you are Assistant Judge Advocate General for Military Law and Operations for the U.S. Army, am I right?

General HUFFMAN. That is correct, Congressman.

Mr. SCHIFF. General Huffman, I have to acknowledge that I am on standby status and my uniform has hung in my closet for the last 2 years, but I am also a judge advocate in the U.S. military. My uniform is blue when I put it on but I think we have the same mission.

I want to ask you, although even if support for civilian law enforcement could be legal under the Posse Comitatus Act, the military will not necessarily supply it in all occasions, will it?

General HUFFMAN. No, Congressman, we will not.

Mr. SCHIFF. Well, the military has its own missions to perform so it has to, for its own internal policy reasons, limit the support it can provide?

General HUFFMAN. That is correct.

Mr. SCHIFF. All right. And General Pickler, I thought I heard you say that there was a necessity for a drug nexus for your command to participate in training; did I hear that correctly?

General PICKLER. You did, sir.

Mr. SCHIFF. Why was there a requirement in your command for a drug nexus to exist?



General PICKLER. The mission of Joint Task Force Six is to plan and coordinate DOD, title 10 support to Federal, State, and local drug-related law enforcement agencies within the Southwest border region.

Mr. SCHIFF. And you were the commander of Joint Task Force Six at that time?

General PICKLER. Yes, I was.

Mr. SCHIFF. Are you still the commander?

General PICKLER. No, sir; I have had two assignments since then.

Mr. SCHIFF. OK. You were explaining why the drug nexus had to exist for Joint Task Force Six.

General PICKLER. Yes, sir, that was the reason we were constituted; that was our mission.

Mr. SCHIFF. It was a drug-related mission?

General PICKLER. Absolutely, sir.

Mr. SCHIFF. And did your command in some way provide training or other assistance to the Bureau of Alcohol, Tobacco and Firearms for this particular matter, the Waco matter?

General PICKLER. We provided the support that is outlined in the execute order in terms of the medical support, the communications support, and so forth prior to the events of Waco in a category we call general support to law enforcement, yes, sir.

Mr. SCHIFF. And you would not have provided that support if there had not been a drug nexus?

General PICKLER. JTF-6 or one of its tactical control units would not have provided that support, sir.

Mr. SCHIFF. So what information did you receive that persuaded you that there was a drug nexus in this case for you, as commanding officer, to provide that support?

General PICKLER. I received several reports of that nature, both from the people who attended the meeting on February 2 and from the people who attended the meeting on February 4 in Houston, and subsequently in the process of their developing their presentation to me for my approval of the execute order.

Evidence of that nature included the fact that certain members of the Branch Davidian group had previous drug-related activities, and that precursor chemicals may have been involved there on the site. Some pictorial evidence of the fact that a methamphetamine lab was alleged or a possibility.

Mr. SCHIFF. Pictorial evidence?

General PICKLER. Schematic evidence. I believe that at the meeting of February 4 there was pictorial evidence of the fact that the compound, itself, would have a methamphetamine lab in one of the ancillary buildings there. And that was what they expected it to be.

Mr. SCHIFF. My time is almost up, sir, so excuse me for interrupting, General, but who is giving you this information?

General PICKLER. We had the information from BATF and Operation Alliance in their support request where they submitted it through the military support working group, their duly constituted working group to provide and coordinate DLEA requests to the Joint Task Force Six; gave a statement in there that said there would be, it characterized the organization as an extremist type organization believed to be involved in the manufacture of methamphetamine or words to that effect.

Mr. SCHIFF. And that was originating with the ATF?

General PICKLER. Yes, sir, to the best of my knowledge it was.

Mr. SCHIFF. My time is up, Mr. Chairman, thank you.

Mr. MCCOLLUM. Thank you, very much.

Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

There are a few operations down at this end of the table that I am trying to maneuver and that is these microphones. I hope my time allows me to get them maneuvered correctly.

Mr. MCCOLLUM. You certainly may. Let me restart the clock and you may ask him or I will. I think Ambassador Holmes wanted to make a comment I will not charge to you.

Ambassador Holmes.

Ms. JACKSON LEE. I will ask the Ambassador a question, Mr. Chairman, and you can go ahead and yield the time initially and I will be more than happy.

Mr. MCCOLLUM. Go ahead, Ambassador Holmes.

Ambassador HOLMES. Thank you, Mr. Chairman.

I think it is important to emphasize that Operation Alliance is composed of all of the Federal, local, and State law enforcement agencies involved in the counter drug war.

And JTF-6 receives 600 or 700 requests a year. These are vetted by Operation Alliance and on that board the senior members are the Drug Enforcement Agency, ATF, Customs, and Border Patrol. And so when JTF-6 receives these requests from that duly constituted board, it is not their role to second-guess any connection with drugs.

Mr. MCCOLLUM. Thank you, Ambassador.

You may now proceed, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you, very much.

I have made a commitment in beginning my questions, as to re-emphasize the importance of these hearings because, of course, lives were lost and we have made a commitment to try and ensure that that does not happen again, at least, under these circumstances.

So, Ambassador, I want to just recount for you the information that I have about the assistance that might have been given, that was given, provision of training facilities and equipment, aerial reconnaissance missions, the use of helicopters during the raid and advice concerning ATF's medical and communications plan.

This is a summary out of the Treasury report. Is any of that contrary to what the policy is with respect to assistance, if asked, by a civilian agency of the military? Is any of that inconsistent?

Ambassador HOLMES. No, it is not.

Ms. JACKSON LEE. Can you expand as to whether any other kind of assistance could be given?

Ambassador HOLMES. The Department of Defense has had a broad mandate of authority from the Congress to provide support, and I emphasize support, to law enforcement agencies involved in combating illegal drugs.

These requests come in, they are vetted, they are looked at. They can be requests for equipment, technical assistance, training—

Ms. JACKSON LEE. So this is not out of the ordinary but the list that I just recounted for you is certainly not out of the ordinary?

Ambassador HOLMES. Certainly not. This is one of five programs in the Department of Defense's counterdrug program, which is a part of the national program.

Ms. JACKSON LEE. I appreciate that. This is about 3:30 in the afternoon and it may be a little levity is allowed. I am going to just say to BG Pickler, I was going to call him big guy, but I assume it is brigadier general and I wanted to make sure I had the right title.

General PICKLER. It is major general, thank you.

Ms. JACKSON LEE. It is major, that is your initials, so I should not call you Big Guy Pickler?

General PICKLER. At the time I was a brigadier general someone saw fit to promote me.

Ms. JACKSON LEE. I just wanted to make sure that I had the right title and I will have a question for you.

Lieutenant Colonel Lindley.

Colonel LINDLEY. Yes, ma'am.

Ms. JACKSON LEE. Let me thank you for making the system work. As I understand it, you asked some additional questions on having the opportunity to review some of the requests being made, is that correct?

Colonel LINDLEY. May I correct this for the record right now and this is the second time it has been said.

Ms. JACKSON LEE. Yes, please.

Colonel LINDLEY. The reason the system worked is because of the Special Forces soldier who is out there that questioned the tasking that was being submitted. They had the foresight, they had the knowledge and the training ahead of time to go out there and raise these issues. And the real people you thank are the soldiers that were out there in the field.

Ms. JACKSON LEE. Let me say to you that you now reinforce my point even more because that was the line officer, out in the field, making the assessment. Let me ask you, either based on the line officer's assessment and then your ultimate participation, would you think that any of the requests and I include things like reconnaissance missions, the use of helicopters during the raid, advice concerning ATF's medical and communications plan, did that suggest to you ways to kill better or to make the operation work if it was to go through?

Colonel LINDLEY. It was a support role. As far as the first part of your question, killing better, that is not what—

Ms. JACKSON LEE. It is a shocking question and you are hesitant to answer because you are not sure what I am trying to get at. Would the support opportunities be offered to ensure that a raid, if it occurred, would be effective and the least amount of lives would be lost? Or would it be to do quite the contrary, ineffective and lives to be lost?

Would you think that all of this that was asked of you would help to ensure that less lives were lost?

Colonel LINDLEY. I think a basic tenet of anybody in Government service is to preserve life and I think that this would support that concept, ma'am.

Ms. JACKSON LEE. Thank you, very much.

Let me go on to the judge advocate and query you again about the question of the separation of military and civilian. I might guess that you might have been trained at the University of Virginia Law School?

General HUFFMAN. At the Judge Advocate General School at the University of Virginia, yes.

Ms. JACKSON LEE. And I cannot join in with Congressman Schiff, I do not have a uniform, but I am able to practice before the U.S. Military Court of Appeals so I may have some standing here.

I think it is important to try and understand why we separate out the civilian responsibility and the military assistance. Could you say for the viewers and listeners and those of us who are trying to get to the bottom line of what happened, it is a difference between dominance or dominating the civilian community versus providing assistance, that we are trying to keep a certain degree of separation so that we are not a Nation dominated, run by, controlled by the military, but yet, you are allowed to assist when necessary under the certain laws that we have?

General HUFFMAN. Yes.

Ms. JACKSON LEE. Would you expand on that, please?

General HUFFMAN. Well, as I mentioned a little earlier, our Founding Fathers intended this separation of the civilians and the military. They did not want the military dominant, as it was in Europe and so the separation, the civilian control of the military became one of our tenets in the United States. And the Posse Comitatus Act is really a logical followon to that.

Ms. JACKSON LEE. Did you help in Oklahoma City, after the tragedy, did you help in any medical way or any other manner, might have provided any assistance?

General HUFFMAN. The Army and the National Guard both helped in Oklahoma City, yes.

Ms. JACKSON LEE. So you were asked to help and you did work with civilian agencies in that instance?

General HUFFMAN. That is correct.

Ms. JACKSON LEE. Thank you for that, and thank you, Mr. Chairman.

Mr. MCCOLLUM. Your time has expired. Ms. Ros-Lehtinen?

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

I would like to yield my time to Mr. Shadegg.

Mr. SHADEGG. Thank you, very much, I appreciate that. Let me begin by saying that I am somewhat disappointed that Mr. Schumer is no longer with us. He was offended by a remark of mine last evening having to do with something I said. I want him to know that I not only have not seen or read the Soldier of Fortune magazine. I was unaware of any of its applications to this hearing until the hearing started. So any implication that I am asking questions out of the Soldier of Fortune magazine or its theories is inaccurate.

General Pickler, let me begin with the operational order. This is the order that Mr. Buyer was asking you about and it is the order which has in the second or third sentence, "This operation has the highest interest of BATF, Washington and has been approved at that level."

Page 2 of that order contains a sentence which I think is a good in for where I want to ask some questions. About the third sen-

tence says, "Intelligence indicates that an active methamphetamine lab and deliveries of the required chemicals to produce the substance of methamphetamine."

So I guess it means the presence of those things. Intelligence in the military can mean military intelligence. I presume from your earlier testimony that this is not military intelligence that indicated that.

General PICKLER. You are absolutely right, sir, it was not military intelligence and that is one of the reasons we do not question the duly constituted law enforcement officials because that could lead us down the path in violation of Executive Order 12333, to the prevention of military surveillance or intelligence oversight of U.S. persons. So we do not become involved in that kind of activity, sir, so the intelligence was law enforcement related only.

Mr. SHADEGG. And it would be of concern to you, would it not, if that intelligence were false or fabricated or based on information that was years old and clearly no longer valid?

General PICKLER. Yes, sir, it would be of concern to me, but I had no reason to doubt it.

Mr. SHADEGG. OK. Mr. Crain, do you sometimes become concerned about that intelligence being inaccurate and specifically I am referring to a faxed memo in which there is a handwritten note at the bottom of it which says, "To reinforce SOF resistance to potential cheating which seems to recur at JTF-6."

Are you familiar with that language?

Mr. CRAIN. I am not, sir. I would like to see the memo, if possible?

Mr. SHADEGG. Do you know what the word "cheating" would mean in the context of the intelligence you receive in order to determine if there is a drug nexus?

General PICKLER. Up until last Tuesday, I did not, but, yes, sir, I do now.

Mr. SHADEGG. Would you explain to the committee what it means?

Mr. CRAIN. Cheating would mean, in this context, a Federal agency lying to another Federal agency to obtain support, sir.

Mr. SHADEGG. That would concern me significantly.

Lieutenant Colonel Lindley, there came a point in time, as I understand from your testimony, when you became concerned about this training mission, its involvement with methamphetamine and a methamphetamine lab.

What dangers do you know to be associated with a methamphetamine lab?

Colonel LINDLEY. First of all, it was a methamphetamine lab from the beginning.

Mr. SHADEGG. That was the representation from the beginning?

Colonel LINDLEY. That is correct. And for a number of different aspects, backing away for a moment from the law, just the physical characteristics of methamphetamine production and the dangers in the chemicals. There are ammunition considerations. If the medics were down there, the potential difficulties with an explosion of an ongoing meth lab. You cannot just simply shut one off.

The second side of it was that the obvious production of taggants evidence that would be present within the area that could be im-

pregnated within the clothing would get the soldiers, themselves, involved in the physical collection of evidence.

Mr. SHADEGG. And, indeed, it is an extremely dangerous circumstance or situation, correct?

Colonel LINDLEY. Absolutely, sir.

Mr. SHADEGG. The field officer that you are talking about, is that Major Petree, was he the one on the field who raised these concerns and discussed the issue of methamphetamine with you?

Colonel LINDLEY. Sir, Mr. Crain, next to me was the one who received the phone call. I believe it was Major Ballard who talked to him first, the special operations rep out at JTF-6. I subsequently talked to Major Petree.

Mr. SHADEGG. And did you explain the dangers of a methamphetamine lab to Major Petree?

Colonel LINDLEY. I raised that as one of the many issues that we were discussing, yes, sir.

Mr. SHADEGG. And Major Petree, once that had been raised with you, as I understood it, you took action with regard to those dangers and with regard to that issue and this matter, correct?

Major PETREE. Sir, we were a little ahead of that game.

Mr. SHADEGG. OK, tell us where you were.

Major PETREE. When we had first heard about the potential or the possibility, Major Ballard is the operations officer for the RSU and was my link on a daily basis to General Pickler and JTF-6. We were continually talking and continually sharing information.

He is also very familiar with RSU operations as the operations officer. Roughly about January when I was first given an indication, that something was up, that something was coming down, a few noted points were coming out and one of those was methamphetamine in terms of a laboratory being part of this objective for this, as at that time, an unnamed LEA, law enforcement agency.

I then met with my, essentially my own company staff and two of whom are A Team Delta Special Forces medical sergeants—A Team Delta is the MOS code—and one of whom was Sergeant Fitts.

In discussions, I did ask that they produce a paper like that because at that time, sir, you have to understand that I also had, by completion of my tour out there, January through March, our organization had conducted eight operations for JTF-6. There is some roll-off into some of the operations where, potentially my own personnel, could be exposed to the chemicals used in methamphetamine production.

Some of you are keying on lab, but do not forget that once the individual gets done pouring chemicals into apparatus or something like that, he takes that trash and he dumps it. And some of my operational areas associated with other types of operations in support of LEA's, these dumping areas could potentially be or come across, my personnel could come across them during movement to and from.

So I hope that answers your question.

Mr. SHADEGG. That would be very dangerous. I see my time has expired, and we will pick up on this in the next round. Thank you.

Mr. MCCOLLUM. Thank you, Mr. Shadegg.

Ms. Lofgren, I believe you are next on your side, you are recognized for 5 minutes.

Ms. LOFGREN. Could I pass to the next Democrat at this time, sir?

Mr. MCCOLLUM. Certainly. Ms. Slaughter, would you like 5 minutes?

Ms. SLAUGHTER. Yes, thank you.

I want to read very briefly from testimony by Mr. Brault that he gave to Davey Aguilera.

Where he talks about when he first went to the compound and said that Vernon had said that he had found a methamphetamine manufacturing facility which he called a still. And that there were a number of documents containing recipes, instructions on how to manufacture amphetamines. And the previous occupant of the property was George Rodan of great fame who was run off at gun point, I think. But he had rented out part of the property and one of the renters was a man named Donnie Joe Harvey who later went to prison for robbery and was considered dangerous by the Waco authorities, and was also rumored to be into drugs.

Vernon Howell then he had turned these over to the sheriff, but witnesses who were with him when the sheriff's department came said he turned over nothing.

There was a building, this man says, from the summer of 1988 to the time that he left which was off limits to everybody except Koresh, himself. And he said that there was literature in there but never gave any indication. Nobody was ever allowed to go in. That building burned to the ground in the spring of 1990 and one night in 1989, when talking to a few of us, this man says, again, I am quoting, "I was the only ex-member there. Vernon was talking about trafficking drugs as a way of raising money. He seemed very interested in getting money through this means."

Now, I appreciate that this is the word of just one person who had lived there, but I would like to ask in your considered professional opinion, if you had this kind of testimony from a person, and that several of the people had mentioned that that there was somebody connected there who had gone to prison for drugs, there was a building completely off bounds to everybody else, would it have given you some pause that there might have been a methamphetamine lab there?

Do you think that the idea that it was there is totally farfetched, given this information I just read you?

General PICKLER. Ma'am, from my perspective in talking with the people from JTF-6 who worked this mission and refreshing my own memory from having talked to them, both currently active and retired officers, none of us had any reason to doubt the existence of a methamphetamine lab based on what we had been told and what we had seen at the meetings we attended.

Ms. SLAUGHTER. The previous panel of this morning said that they saw no earthly reason to think that there was one there. Is it your opinion that it was something that needed to be considered before serving this warrant and something to search for on those premises?

General PICKLER. I think the existence of a methamphetamine lab was certainly very possible under the circumstances and one

thing that has not been added by previous testimony; I would point out that when Lieutenant Colonel Berthal came back from the 4 February meeting in Houston, chaired by the BATF and that organization, he presented to me another factor which was that the BATF intended to include a lab team from the DEA in the operation.

And so that certainly further endorsed our own understanding of the potential for methamphetamine production and the lab team would have then been constituted to handle those kinds of precursor chemicals and the dangerous chemicals that might exist in that kind of an operation.

Ms. SLAUGHTER. I want to ask you about something that goes to state of mind. But during the planning of this raid and your interaction with the people who were planning it, was there ever any indication that you could see on their part that it ever occurred to them that they would be met with gunfire or that they would need their own guns when they went out to serve this warrant?

During the training were they prepared to go in shooting is really the question I want to get at?

Major PETREE. I did not get that indication in observing the rehearsals and some of the training they were going under. I think they were prepared for the eventuality of that. But, no.

Ms. SLAUGHTER. That it might happen, but that was not discussed at all during the planning? As far as you know, they had the sense that they could go out and serve that warrant and walk away.

Major PETREE. To the best of my knowledge, that is correct.

Ms. SLAUGHTER. Thank you, very much.

Mr. MCCOLLUM. I think your time has expired, thank you.

Ms. SLAUGHTER. Thank you.

Mr. MCCOLLUM. At this time, I recognize Mr. Coble for 5 minutes.

Mr. COBLE. Mr. Chairman, I will yield 5 minutes to the gentleman from Arizona, Mr. Shadeegg.

Mr. SHADEGG. Thank you, Mr. Coble, I certainly appreciate it. Members of the panel, let us apologize for the structure of this, it was forced upon us. It causes us to break up the sequence of the questioning.

Let me pick up where I left off. As I understand it, the individual to whom we next turn in this process was Staff Sergeant Fitts, is that right? You were charged with writing a paper, am I correct?

Mr. SHADEGG. What did the paper say? What was your goal in writing the paper?

#### **STATEMENT OF S. SGT. STEVE FITTS, U.S. ARMY THIRD SPECIAL FORCES GROUP, FT. BRAGG, NC**

Sergeant FITTS. First, sir, the goal of writing the paper was to inform my commander, and the other detachments assigned to my company, of the hazards associated with coming across a methamphetamine lab while out on movement.

Mr. SHADEGG. Who instructed you to prepare that paper?

Sergeant FITTS. At the instruction of my commander, Major Petree.



Mr. SHADEGG. OK. Now do you know what happened with that paper, what was done with it?

Sergeant FITTS. After review by Major Petree, we took it to Houston with us to the meeting, and then it was presented to the BATF.

Mr. SHADEGG. OK. So the paper was presented to the ATF at a meeting in Houston?

Sergeant FITTS. Yes, sir.

Mr. SHADEGG. OK. And did you discuss the paper with them?

Sergeant FITTS. No, sir, I never discussed the paper with them.

Mr. SHADEGG. But you were present at that meeting?

Sergeant FITTS. Yes, sir.

Mr. SHADEGG. OK. After that meeting, was there further discussion with ATF about the issue of the methamphetamine lab, and were they afforded an opportunity to read the paper?

Sergeant FITTS. Not in the short amount of time that we were there would there have been a chance to read the paper.

Mr. SHADEGG. There was a subsequent meeting, however?

Sergeant FITTS. No, sir. I mean, not until the team went to Fort Hood, TX.

Mr. SHADEGG. Not until the team went to Fort Hood, TX.

Was there a point in time when you reached any conclusions about ATF's response to that paper?

Sergeant FITTS. I never got a feeling from them, sir, as to the response to the paper, and I never—I never had discussions with them about the paper. But let me say, at the same time, I was trying to do research through a book to understand my role better, to do my job more completely, so I never gave them an opportunity to discuss it with me.

Mr. SHADEGG. Well, maybe I'm confused here, but my understanding is that either directly or through other members of the military that were involved in this project, you had contact with ATF, and it became pretty evident to you that ATF was not worried about the concerns expressed in your paper; isn't that correct?

Sergeant FITTS. Sir, my impression was that they were not worried about the methamphetamine lab, no.

Mr. SHADEGG. Your impression was that they were not worried about it?

Sergeant FITTS. Yes, sir.

Mr. SHADEGG. And you drew that on further contact with the ATF?

Sergeant FITTS. Through the discussions during the Houston meeting.

Mr. SHADEGG. Further discussions during the Houston meeting?

Sergeant FITTS. Yes, sir.

Mr. SHADEGG. In what regard? They just didn't seem too concerned about it at the Houston meeting?

Sergeant FITTS. Well, sir, like I said before, I was doing research in a book, so I did not pay attention entirely to the discussions going on between their leaders and Major Petree, so they might have discussed it further, but I did not ever hear it discussed again myself.

Mr. MCCOLLUM. Sergeant, would you pull your mike a little closer? In my advanced age, I'm having difficulty hearing you. Thank you.

Sergeant FITTS. Sorry, sir.

Mr. SHADEGG. Did the ATF ever, to your knowledge, express any concern about the dangers that were presented by a methamphetamine lab?

Sergeant FITTS. Not to my knowledge, no, sir.

Mr. SHADEGG. Did you reach a conclusion that perhaps they didn't, themselves, believe that there was a methamphetamine lab present?

Sergeant FITTS. I don't know if I ever reached a conclusion along those lines or not, sir.

Mr. SHADEGG. Well, let me put it differently. Did anything in their conduct, following your handing them the paper, suggest that they were indeed concerned about the presence of a methamphetamine lab and the dangers that were exposed as a result of a lab being there?

Sergeant FITTS. No, sir. Nothing in their conduct would indicate that.

Mr. SHADEGG. Is there anybody else there who can say to me that the BATF reacted in a conscientious way and said—did things that evidenced their concern about the presence of the dangers as detailed in Staff Sergeant Fitts' memo?

Major PETREE. In terms of chronology, the next time I heard or discussed anything or listened to anything from the BATF, reference the methamphetamine lab, was when we were also attempting to get clearance at Fort Hood for the use of flash bags with the Fort Hood range control.

Mr. SHADEGG. Sergeant Fitts, let me just go back to this one more time.

In discussions with committee staff, I thought—it is my understanding, you made it clear to at least the staff that the BATF pretty well blew off the issue of there being a methamphetamine lab.

Sergeant FITTS. Yes, sir, I've said that the impression I received that they—once the paper was presented, they no longer showed an interest in the methamphetamine lab.

Mr. SHADEGG. From that point forward, they didn't show any interest in an methamphetamine lab?

Sergeant FITTS. To me, sir; yes, sir.

Mr. SHADEGG. Thank you very much. I have nothing further.

Mr. MCCOLLUM. Thank you very much. Mr. Taylor, you are recognized for 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman.

I'm curious. I want to open this up to the panel.

Are you prohibited by law from training law enforcement agents from other either U.S. Government agencies or local law enforcement agencies?

If they come to you and say: We'd like to learn how to shoot RM-16's; can you teach them that? If they come to you and say: We'd like to learn a little bit about survival training, should one of our guys get lost in a national forest; if they come to you for any of those reasons, can you train them by law?

General HUFFMAN. Mr. Congressman, we can. None of those would be prohibited by the Posse Comitatus Act.

Mr. TAYLOR. Does that happen on a fairly regular basis?

General HUFFMAN. Yes, fairly frequent. But those special requests, I'm not certain. But requests from law——

Mr. TAYLOR. Requests like that. I mean, the great resources of the Department of Defense and the great training and expertise that's available, doesn't it make sense to make that available to the citizenry of this country?

Yes, sir, Mr. Ambassador.

Ambassador HOLMES. Congressman, there is—by law, there is a wide range of activities, of support activities, which law enforcement agencies—Federal, State, local—either involved with counter-drug or other law enforcement problems—they can come and request that from the Defense Department at any number of levels.

Mr. TAYLOR. Well, let me make it specific, then. You have the ATF, and they know they're going into a compound, and they know the guy's got probably 100 fully automatic weapons. And they know he's got a dangerous history, because he shot at the previous preacher there, and they know that he has told a special agent he's not going to be taken alive; he's not going back.

So they come to the Special Forces or they come to the Army and they say: Can you teach us very briefly what you know about getting into a building?

Is that legal for them to do that?

Ambassador HOLMES. Well, since we have a particular case involved here, known as Waco, I would like to ask General Pickler to answer that question.

Mr. TAYLOR. OK. But ignoring the talk of the meth—I can't even say it—the amphetamine labs, what if they just came to you and said: We have a person that is dangerous, suicidal; he's got a lot of people with him; we need some expertise on how to get into that building. Can you teach us that? Is it legal?

Ambassador HOLMES. Yes, I would say—I would say—well, General Huffman may have a different view, but I would say that is legal.

But normally it doesn't happen that way. Normally what happens is that law enforcement comes to the Defense Department and asks—or the sheriff's department, various people to be included in the next MP School course on X, Y, or Z. That's normally the way it happens.

Mr. TAYLOR. OK.

Ambassador HOLMES. This is certainly an activity to render support to law enforcement.

Mr. TAYLOR. OK. But had that happened, it would have been legal, is what you're telling me.

Ambassador HOLMES. Had what happened?

Mr. TAYLOR. Had the ATF just come to you without even mentioning the amphetamine lab and said: We have a situation; we understand you're experts at this; tell us how we do it.

You can tell them. Is that not correct?

Ambassador HOLMES. I think what you're asking is whether a drug connection is required, and it isn't.

Mr. TAYLOR. OK.

Ambassador HOLMES. I mean, it can be——

Mr. TAYLOR. I want that for the record, that the drug connection is not required.

Gentlemen—and I want to open this up to the panel. I'm very concerned that some groups out there are going to great extents to paint you, the ATF and the law enforcement of this country, as the bad guys. And that troubles me, because I think you're the good guys.

So let me just ask this panel: Did any of you participate in the raid, or do any of you know of anyone else in the United States of America, on active duty with the United States of America, not the Texas National Guard, that participated in this raid?

The second question is—and I'm going to ask of every single panel that comes in the remainder of this hearing—has anything that any of you heard or seen or read justify the murder of four ATF agents and the wounding of 20 more in the serving of that warrant?

Mr. MCCOLLUM. Mr. Taylor, before you get onto the answer of that second question, the record cannot show the answers of the collective panel.

Would you mind, for the record, going down the list. I'll give you the time.

Mr. TAYLOR. Absolutely.

Mr. MCCOLLUM. And getting an answer to that first question about whether that person knows whether or not there was any active duty military personnel at the scene of the Waco raid on February 28, 1993.

Mr. TAYLOR. Who participated.

Mr. MCCOLLUM. Or reporters.

Mr. TAYLOR. Those reporters didn't participate in the raid. They were witnesses.

Mr. MCCOLLUM. Well, that's true.

Mr. TAYLOR. There's a big difference between—

Sergeant Moreland.

Sergeant MORELAND. No, sir, I did not know of anyone at Waco at the raid, and I was not there, sir.

Mr. TAYLOR. The lieutenant colonel?

Colonel LINDLEY. Sir, I was in Fort Bragg the entire time, and I have no knowledge.

Mr. MCCOLLUM. Can we ask Mr. Crain that first, too?

Mr. CRAIN. Sir, I have no knowledge of any active duty participation.

Mr. TAYLOR. If you don't mind, Mr. Chairman, I'll say the names for the record.

Mr. MCCOLLUM. Please go ahead.

Mr. TAYLOR. We'll go back first with Staff Sergeant Moreland. Second was Mr. Crain. Third was Lieutenant Colonel Lindley.

Brigadier General Huffman.

General HUFFMAN. No, Congressman, I was not there, and I know of no one who participated in the raid.

Mr. TAYLOR. Major General Pickler?

General PICKLER. Sir, I was not there. And I know of no one in JTF-6 or under my tactical control who participated in the raid.

Mr. TAYLOR. Major Petree.

Major PETREE. No, sir, I was not there. I know of no one who was, and I can guarantee that nobody in my command was there.

Mr. TAYLOR. If you—the other two gentlemen, your name tags are turned away from me, so if you would identify yourselves.

Sergeant DUNN. I'm Sergeant First Class Dunn. No, I was not there, and I know of no other active-duty military that were there.

Sergeant FITTS. Staff Sergeant Fitts. I know of no one who was.

Mr. TAYLOR. OK. And Ambassador Holmes did not answer did not answer. Would you answer that, too, please?

Ambassador HOLMES. I wasn't even in the Defense Department at that time, but I——

[Laughter.]

Ambassador HOLMES. But to the best of my knowledge, I know of no——

Mr. TAYLOR. OK, thank you. If you would——

Ambassador HOLMES. No, you asked the other question, too. I think it's very important to clarify the record. That's part of why those hearings are going on——

Mr. TAYLOR. Thank you.

Ambassador HOLMES [continuing]. Are to make this record clear. And I don't think there's anybody on either side of the aisle that doesn't want it to be that way. So please ask your questions.

Mr. TAYLOR. As people who are sworn to defend and uphold the Constitution of the United States, have any of you—has anything that you have seen, anything that you have heard or read, justified the murder of four ATF agents and the wounding of 20 more in the serving of the warrant, and again the murder by David Koresh and his followers, as they served a warrant on February 28.

Do any of you all think you saw anything that justifies that?

Mr. MCCOLLUM. You can answer collectively or individually to that. I don't think we need to go down the row for this purpose. If anybody knows anything that would justify, just volunteer.

Mr. TAYLOR. I'll call the roll. Sergeant Moreland.

Sergeant MORELAND. No, sir.

Mr. TAYLOR. Mr. Crain.

Mr. CRAIN. Absolutely not.

Mr. TAYLOR. Lieutenant Colonel Lindley.

Colonel LINDLEY. No, no.

Mr. TAYLOR. Brigadier General Huffman.

General HUFFMAN. No, Congressman.

Mr. TAYLOR. Ambassador Holmes.

Ambassador HOLMES. No.

Mr. TAYLOR. Major General Pickler.

General PICKLER No, sir.

Mr. TAYLOR. Sergeant. Again, I wish you'd turn your name tag.

Sergeant DUNN. No, sir, I know of nothing.

Mr. TAYLOR. Staff Sergeant Fitts.

Sergeant FITTS. No, sir, I do not.

Mr. TAYLOR. Thank you very much.

Mr. MCCOLLUM. Your time is up, Mr. Taylor. Thank you for the questions.

Mr. Buyer, you are recognized for 5 minutes.

Mr. BUYER. Thank you, Mr. Chairman.

One thing I wanted to get cleared up because I think Treasury is playing games with the committee and that deals with our request for documents, Mr. Chairman. We have General Pickler here

and in his testimony the subcommittee asked ATF for all evidence of precursor chemicals. None of the documents that we have says anything with regard to precursor chemicals. Major General Pickler testified that you were at a meeting where they said that there were precursor chemicals. Let us clear the air here on whether that happened or not.

General PICKLER. No, sir, I was not at the meeting. My personnel were at the meeting, during which precursor chemicals were discussed as one of the elements to establish the possibility of the existence of methamphetamine lab, sir.

Mr. BUYER. Thank you. If there is anyone from Treasury here if there are any documents to that we would appreciate it, otherwise, we will continue to go after Treasury on their conduct.

Let me ask a question to Major Petree. Did you or your team ever provide any training other than that directed in the JTF-6 operation order that you are aware of?

Major PETREE. No, sir.

Mr. BUYER. Were you or your team ever asked by ATF to provide any other forms of additional support?

Major PETREE. Just earlier on in the initial, the 2 February meetings, and I think it was more of an approach of anything you can give us, any type of support and trying to identify that. The only other thing is we had discussed before the possibility of providing 18 Deltas onsite, the possibility of us reviewing tactical plans. Those are the two that stand out for me.

Mr. BUYER. The review of the tactical plan, did you participate in that?

Major PETREE. No, sir.

Mr. BUYER. They asked but you declined, because it was outside the scope of your operations order?

Major PETREE. By the time I received General Pickler's order and also by the time I had also already issued my own order to the personnel to go conduct the mission, we had already determined by that point that we were not going to get it near that.

Mr. BUYER. Did you or any member of your team ever provide close quarters combat training to ATF in connection with the mission?

Major PETREE. No, sir.

Mr. BUYER. Are you familiar with whether they did have any of the training on close quarters combat?

Major PETREE. Sir, to be honest, this had come up in answering some of the staffers questions, and of course, for almost 2 years now it has been a continuous question and it has also been related in the Soldier of Fortune magazine.

At no time did any of my personnel give any close quarters combat training nor did I. There is also something here that the ATF, SRT's, did not ask for. I do not think they specifically wanted it. They certainly seemed to have the capability or they were doing it on their own, something similar.

It was never really a serious question from ATF for close quarters battle training.

Mr. BUYER. Are you familiar with MOUT?

Major PETREE. Yes.

Mr. BUYER. And what does it stand for?

Major PETREE. Military Operations on Urban Terrain.

Mr. BUYER. And that is almost some of the easier form of combat, is it not?

Major PETREE. That is—

Mr. BUYER. Could you describe what that is?

Major PETREE. That is the doctrinal U.S. Army term for combat in built-up areas or urbanized areas or semi-urbanized areas.

Mr. BUYER. And would it be described as you are going to break down the doors, throw a handgrenade and kill anything that is moving, is that correct?

Major PETREE. That more typifies the general instruction that goes on for MOUT, yes, sir.

Mr. BUYER. That is what your job is?

Major PETREE. Yes, sir.

Mr. BUYER. And close combat support though is laying down discriminating fields of fire, is it not?

Major PETREE. Close combat support?

Mr. BUYER. Or close quarters combat support.

Major PETREE. In close quarters battle, yes, it is discriminating fire techniques.

Mr. BUYER. What is the difference in the level of training between MOUT and close quarters combat training, in time to do that?

Major PETREE. Just simply, obviously, for the U.S. Army term for the type of operations where you use discriminative fire, using specialized personnel who are selected to perform this and specialized equipment to also perform this and specialized ammunition is close quarters battle. The time frame for that is considerably more extensive than it would be to prepare, say, an infantry company or again their mission essential task list of combat in an urban environment.

Mr. BUYER. But for the Army is it not 2 months of training for close quarters combat support?

Major PETREE. For close quarters battle, sir?

Mr. BUYER. Battle support is 2 months in training to do that?

Major PETREE. It is approximately 2 months, yes, sir, just for the basic line, yes, sir.

Mr. BUYER. ATF was not even close.

Mr. MCCOLLUM. Thank you, very much, Mr. Buyer.

Mr. Brewster.

Mr. BREWSTER. Thank you, Mr. Chairman.

Ambassador Holmes, I think my friend Mr. Taylor established the fact that it is certainly legal the training that was done. Was not the only question of the methamphetamine lab who was going to pay? They did not have to pay for that training?

Ambassador HOLMES. The issue of paying or not paying is related to the budget which the Congress gives us every year to support law enforcement agencies.

Mr. BREWSTER. I understand that.

Ambassador HOLMES. And we support all kinds of agencies. The Forest Service taking down marijuana, support the Customs Service across the border, and that is funded.

Mr. BREWSTER. And you should, and I agree with that.

Ambassador HOLMES. Right.

Mr. BREWSTER. Mr. Schumer, a moment ago, made the comment that even if there was not a methamphetamine lab, the fact that it was alleged did not break any law and you concurred with that. Would that mean then that any Federal agency could, if they chose, allege that you or I or anyone else has a methamphetamine lab with no impunity?

Major PETREE. It does not work that way. I mean the request for support, they come in—

Mr. BREWSTER. I am not talking in that context. Mr. Schumer was talking about just the fact that there was a methamphetamine lab alleged and there was no methamphetamine lab did not break any law. Does that then mean that—

Major PETREE. Well, breaking the law as far as we are concerned. At the time the Department of Defense, the Joint Task Force 6 acted on the basis of the information presented by the Operation Alliance

Mr. BREWSTER. Two or three of you have talked about precursor chemicals. What precursor chemicals were alleged to be there? Propylene glycol or what would it be?

General PICKLER. Sir, I am not certain exactly which precursor chemicals were there. I know it was discussed in the context of the possibility of delivery of those kinds of chemicals much earlier than 1993. And the suspicion of precursor chemicals being on the scene if, indeed, there was a methamphetamine lab there.

But precise chemicals were never identified to me.

Mr. BREWSTER. There was never an allegation of a particular chemical alleged to Major Petree or anyone else?

Major PETREE. The only time we heard when you started getting in the conversation of precursor chemicals was during the description in the 2 February preliminary meeting at Operation Alliance. The ATF representative, when he was giving a brief background, as to why they had targeted this organization they had described that the UPS or shipping documents they were keeping a track on that and a great deal of—

Mr. BREWSTER. And there were precursors for amphetamine?

Major PETREE. No, sir, not for amphetamine. All I heard was precursor but consistent with the production of illegal drugs.

Mr. BREWSTER. I notice, too, that you are all active duty and it seems that National Guard helicopters were used. Does that not require the Governor's approval? And did the Governor approve?

Ambassador HOLMES. To the best of my knowledge, that was approved by the government of the State of Texas.

Mr. BREWSTER. So, to your knowledge, the Governor of Texas, Governor Richards approved it?

Ambassador HOLMES. I do not know whether the Governor personally approved it, but I believe, from what I have been told, that at least at the level of the Adjutant General it was approved.

Mr. BREWSTER. Colonel Lindley, I note looking through your notes here, it seems that you were always concerned about if it met the criteria. Did you ever satisfy yourself that it did?

Colonel LINDLEY. Sir, as I testified earlier, I was involved in this thing through the end of the day. I had a message from Captain Becker, who was the third group attorney, near the end of the evening that indicated that the mission had been pared down. And



I believed that everything that occurred out there involving the military was done legally and properly.

Mr. BREWSTER. One more question. Major Petree, I know you were involved in the training aspect of it. And the SRT's are a well trained group to start with. You testified that they thought there was the possibility of gunfire there. Yet, I hear people say that the ATF was out-gunned, that many of them only had side arms, 9mm semi-automatic pistols. I do not know—Beretta, S&W, whatever.

As a Special Forces person, if you were entering that type of a conflict, would you be better armed than that?

Major PETREE. Well, sir, as to whether the ATF strictly had pistols, I can tell you at Ft. Hood, TX, we observed pistols, we observed submachine guns, we observed AR-15's, and we observed a long gun or a—I am trying hard not to use the word "sniper" because it connotes—

Mr. BREWSTER. I understand.

Major PETREE [continuing]. But a long-range type of weapon like that with optics.

Mr. BREWSTER. And you would expect then that each of the personnel would probably be equipped with some combination of those as opposed to just carrying a 9mm handgun?

Major PETREE. Well, that is what we saw at Ft. Hood, yes.

Mr. MCCOLLUM. Mr. Brewster, your time has expired, thank you.

Mr. Shadegg, you are recognized for 5 minutes.

Mr. SHADEGG. Thank you, Mr. Chairman.

Let me begin with kind of a puzzling document that we have in this investigation. It is a document produced by the Treasury Department, along with thousands of other documents and apparently from notes taken following the investigation. And it goes to this issue, so I want to read it.

It says, and these are apparently notes taken down by the Treasury Department investigators following the incident. Unfortunately they do not give us the source of this individual and the way they produced these, just in mass piles, it is impossible for us to identify the source.

But it says, "The use of the National Guard was a scam. In my opinion \* \* \* to my knowledge. There was never any mention of a methamphetamine lab being on the compound \* \* \* this was a scam initiated by Bureau headquarters." I assume that is Bureau of Alcohol, Tobacco and Firearms. "Again, in my opinion, to obtain the additional resources of the National Guard, air support assistance, etc."

That is troubling to me.

Mr. SCOTT. Mr. Chairman, do we have copies of the document he was reading?

Mr. SHADEGG. I believe you have copies of all these documents. It contains a Bates stamp of 00010228.

Mr. MCCOLLUM. Those, for the record, those would be documents that have been produced to both sides for the purposes of the committee by the Treasury Department. So I do not have it up here, but you have got them somewhere.

Mr. SHADEGG. I think the drug nexus issue is one of concern. It is of great concern to me to consider that perhaps one agency of the Federal Government lied to another agency of the Federal Gov-

ernment to procure resources, even if they could have procured similar resources by some other means.

General Pickler, as I understand your testimony they would not have gotten your resources but for the drug nexus, is that right?

General PICKLER. That is correct, sir.

Mr. SHADEGG. And I believe Major Petree made the exact same point, correct?

Major PETREE. That is correct, sir.

Mr. SHADEGG. OK. General Pickler, I want to ask you about a document that I have handed to you, and it is dated 9 September 1993. It says, to SOJ-3, from SOJ-8. Do you have that document?

General PICKLER. Yes, sir; I do.

Mr. SHADEGG. Whom—can you tell me whom that really is to and from in layman's language?

General PICKLER. Sir, I cannot as that is not part of my organization. So I would guess it is Special Operations Command but I am not sure, sir. I have not seen that document before.

Mr. SHADEGG. Do any of you recognize that document? Could you pass it up and down?

Mr. CRAIN. Sir, I do. That is USSOCOM at McDill Air Force Base and the SOJ-3 is the operations office within USSOCOM and I think the SOJ-8, if I am not mistaken, I could be, is the budget office, but I could be mistaken.

Mr. SHADEGG. If one of you would go to that document and go to the paragraph numbered three. It says, in that paragraph, the third sentence, "In that instance"—referring to the Waco investigation and the Waco siege—"we"—and that is why I wanted to know who the author of the document was—"were persuaded to provide BATF free training with the allegation never confirmed, proven, or even acknowledged, that it was for a 'suspected methamphetamine laboratory.'"

I take it, it would be a concern to each of you if you were persuaded to use your resources based on a representation of a methamphetamine lab when no such lab existed nor was there really reasonable evidence that such a lab did exist, would it not?

General PICKLER. It would be of a concern, Mr. Congressman, but I had absolutely no reason to doubt it at the time.

Mr. SHADEGG. You were relying on what you were being told?

General PICKLER. I was relying on what I was being told and what was in writing to us at JTF-6 through the vetting process of Operation Alliance.

Mr. SHADEGG. Well, if you cannot rely on what another agency of the Federal Government tells you, you are in trouble.

Mr. Moreland, I believe that—Staff Sergeant Moreland—you said that you were not present at the time of this proceeding. Were you ever asked to get your act together with your testimony or the events involved in this particular incident to discuss how all these things came down and to kind of get your story together?

Sergeant MORELAND. No, sir. Again, I was not there and I have not. No, sir.

Mr. SHADEGG. A colleague of yours from Ft. Bragg contacted us and indicated you had said that at one point that there were some individuals at the raid. Are you familiar with who that might be, how we might track that individual down?

Sergeant MORELAND. No, sir, I would not.

Mr. SHADEGG. No idea of where that kind of information might come from?

Sergeant MORELAND. No, sir.

Mr. SHADEGG. This seems to me to be a unique opportunity for you to tell the American people about what went on at this incident. Why do you not tell us in your words?

Sergeant MORELAND. As far as how the training went and things like that?

Mr. SHADEGG. Your role. What you think went correctly and what you think went wrong.

Sergeant MORELAND. With the actual mission, itself, the actual—

Mr. SHADEGG. With either the military's role in it or BATF's.

Sergeant MORELAND. I would not like to critique ATF's role because I am not a law enforcement officer and I do not have that kind of experience. So it would be an uneducated guess. So for me to say what ATF did right or what they did wrong would not help anything.

Mr. SHADEGG. Well, what about the military's role? Were you concerned the military was being asked to play a role that, on the basis of information that was not, in fact, accurate? Is that a concern to you?

Sergeant MORELAND. No, sir.

Mr. SHADEGG. Thank you, very much.

Mr. CRAIN. Sir, I would like to clarify the memorandum. The SOJ-3 is, in fact, the operations office. I had thought that you had said SOJ-8, and in fact the SOJ A is the judge advocate's office for USSOCOM. For the larger audience out there, it is the lawyers, the judge advocates—

Mr. SHADEGG. That's correct.

Mr. CRAIN [continuing]. Communicating with the operating people?

Mr. SHADEGG. Absolutely.

Mr. CRAIN. About this concern of those with regard to the allegation of a meth lab?

Mr. SHADEGG. That is a fact.

Mr. CRAIN. Thank you very much.

Mr. MCCOLLUM. Mr. Watt, you are recognized for 5 minutes.

Mr. Lantos is next. I am sorry, I did not see you, Mr. Lantos. You are recognized for 5 minutes.

Mr. LANTOS. Thank you very much, Mr. Chairman.

I want to commend this panel for an outstanding and professional set of responses that I was privileged to watch from my office.

I would like to go beyond the sphere of questioning that you have had so far. The purpose of a congressional hearing is really twofold. One is to find out what happened, and the second is to look to the possible need for additional legislation to accommodate new circumstances.

Now, I raised the question with an earlier panel with respect to the dramatically changing threat environment to the United States, both in terms of terrorism, nuclear smuggling, biological chemical weapons and other items. I would be very grateful, Am-

bassador Holmes—and any other member of the panel—if you would step beyond Waco for a moment and, from your posture of experience of dealing with these issues and dealing with the changing threat to the United States, the World Trade Center bombing, the episode in Tokyo of a violent religious cult pumping poison gas into a subway system, and other matters.

Do you feel that your involvement needs to be redefined, broadened, brought up to date? Because it is very interesting to deal with the minutia of the Waco episode, which I think is very critical at the micro level. But there is a macro level, and the macro level is the threat to the United States in this new environment with both governmental terrorism, individual terrorism, and violent cults. And since you are the entity that is clearly the best equipped, the best prepared, the best funded in the United States, would you care to give us your thinking as to the new ground rules that perhaps might be needed?

Ambassador Holmes, will you begin?

Ambassador HOLMES. Congressman, you have raised a very important point in my view. Certainly, with the World Trade Center attack, unhappily this announced the arrival of terrorism in the United States.

Mr. LANTOS. Exactly.

Ambassador HOLMES. I happen to be the official in the Defense Department responsible for combating terrorism.

Mr. LANTOS. I know.

Ambassador HOLMES. All of us have worked very hard since the beginning of the administration to pick up on the very good work done by the Bush administration to expand our procedures, particularly in light of the phenomenon of the weapons of mass destruction and the possibility after the end of the cold war that these kinds of weapons could fall into the hands of terrorists.

We have done a lot of work. We have made a lot of progress not only within the Defense Department but interagency, working with our colleagues who have the lead agency responsibility. Overseas it is the State Department. Within the United States it is the Justice Department, particularly the FBI.

I think we have the authority we need. We have the funding. We are working on sharpening our procedures, conducting exercises, and we have had very strong support from the President in this regard.

Mr. LANTOS. Would any of your colleagues on the panel care to comment? Go ahead.

General PICKLER. Sir, from my perspective, in work both as the commander of Joint Task Force Six and Director of Operations for U.S. Army Forces Command, we were intimately involved in military support to civilian authorities. I believe that our current policies in dealing with that, coupled with the laws and regulations—particularly the constraints of *posse comitatus*—are appropriate for the use of military forces in the context of today's environment.

I believe the history and tradition on which they are based are as solid today as they have been in the past. My own view is that the emphasis in that regard properly applied to civilian law enforcement agencies for their unique kind of work—different from

the military type of work—is appropriate to combat some of that threat, sir.

Mr. LANTOS. Would any other member of the panel care to comment?

I take it, therefore, none of you feel any need for additional legislation. You feel that the current laws provide the flexibility, even in this very new and changed threat environment, to deal with the issues. Mr. Ambassador?

Ambassador HOLMES. That is clearly my view with respect not only to countering terrorism, but also to combating illegal narcotics.

Mr. LANTOS. In retrospect, what specific steps should have been taken by civilian authorities, civilian law enforcement agencies in bringing you in more effectively?

Ambassador HOLMES. With respect to which problem?

Mr. LANTOS. Waco.

Ambassador HOLMES. I believe that the system worked as it has been set up, and has been well explained during this hearing by General Pickler and others. When the operational lines representing the civilian law enforcement agencies came with a request that was specific, I think JTF-6 had all the authority it required to respond to that. In fact, that is what happened.

Mr. LANTOS. So from the point of view of the Department of Defense, the postmortem reveals nothing that has gone wrong?

Ambassador HOLMES. From our standpoint, everything that was done by the Department of Defense was completely according to law and to the delegated authority of the officials concerned.

Mr. LANTOS. Thank you very much. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Mr. Chabot, you are recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

I have heard four or five times today the question or comment that, whatever the facts were, that did not give Koresh and his followers the right to open fire on Federal officers resulting in the deaths of four officers. That seems to be the spin of the day on the other side of the aisle.

I do not think it should come as any surprise that myself and all of my colleagues agree with the folks on the other side of the aisle. There was absolutely no excuse for the killing of these officers. We are attempting to get all the facts out in this particular case so that we can avoid this type of tragedy in the future.

Let me shift gears here. At the close of the hearing last night, we heard testimony from Agent Aguilera that, contrary to government testimony given earlier in the day, ATF agents in the helicopters were not informed of any rule requiring them to unload their weapons while they were on the helicopters. Mr. Aguilera's testimony on this point is especially important, since he was on the helicopter during the raid.

Mr. Aguilera further testified that the rules of the operation did permit agents in the helicopters to return fire from the compound if they received it. I would like to return to the question of the helicopters with this panel.

The Treasury Department has insisted that the helicopters were used solely as a distraction and not for any aerial assault. That may well have been the plan. But Treasury documents reveal that

at one point at least the idea of a helicopter assault was discussed, as was the idea of a so-called nighttime ninja assault. The idea of a helicopter assault was then dismissed apparently, but one agent went so far as to draft a letter to the Customs Air Branch in Houston requesting that they provide helicopters for an aerial assault.

As part of my question, Mr. Chairman, I ask unanimous consent to introduce two Treasury documents referring to the helicopter air assault plan that was later ruled out in favor of a plan in which helicopters would mainly be used as a diversion.

Mr. MCCOLLUM. Without objection, so received.

Mr. CHABOT. Thank you.

My concern is prompted not only by the initial consideration of an air assault and how an air assault would help to serve a search warrant—I do not know—but also by the testimony last night of Mr. Aguilera.

Now I find that there is yet another document, hand-written notes of some reviewing official that say “HC’s”—which means helicopters—“as a diversion, simultaneous gunfire, worked in Seattle, 300 to 400 meters from boundary, hover,” and then it says “practiced at Hood,” which I assume refers to Ft. Hood.

So my first question to you gentlemen is this: Did any of you hear or participate in any discussion about any plan, proposed plan, or contingency plan to use helicopters for an air assault on the Branch Davidian compound in the initial raid?

General PICKLER. Sir, at my level in JTF-6, I did not.

Major PETREE. Sir, at our level, we did. One of the missions of the detachment was to facilitate the helicopters actually entering into military air space and then entering military air space over what was essentially a rather large area for range operations in terms of live bullets.

In describing what they wanted to do with it, we had to get with how they wanted to employ the helicopters. I was involved in this discussion in order to get the right clearance and coordinate that through the radio to range control, so that we could correctly relay the intent. During that time period, they mentioned the phrase “we are going to use this as a distraction.” Everything else, though, I do not remember hearing, I did not hear.

Mr. CHABOT. There is another document that I would like to have passed out at this time, if I could. I would just like to refer to a couple of terms in here. They use the term “helicopters as a diversion,” and it says “simultaneous gunfire.” Would that have any meaning?

This is a document that we have all received. In going through these documents, you find a lot of information. This is one of the things that we discovered and we thought it would be an appropriate question to ask here, “helicopters as a diversion” and “simultaneous gunfire,” or “worked in Seattle.” Is there another incident in Seattle which would be relevant to the hearings that we have today?

Mr. MCCOLLUM. Let the record reflect that those being asked the question preceding this one answered in the negative.

General PICKLER. Negative, sir. I am not aware of any operation in Seattle or any reference to an operation in Seattle. That is clearly outside the JTF-6 area of operations.

Mr. CHABOT. Do you know if the "Hood" referred to there is Fort Hood, in all likelihood?

Major PETREE. Again, I can testify that they did practice in the State, that they were practicing and using the helicopters as a diversion method. We can testify to that at Hood.

Mr. CHABOT. Let me ask you this: In any of the discussions that were had and any of the training that occurred down at Ft. Hood, did the ATF ever indicate whether they contemplated that this raid would in all likelihood result in civilian casualties?

Major PETREE. Contemplate?

Mr. CHABOT. Yes, was likely to result in civilian casualties or casualties to the members of the ATF themselves?

Major PETREE. I never got a feeling for what they determined to be the likelihood or what sort of percentage of possibility. I did not get any of that kind of indication from them. I just know that in the medical support planning that we had discussed, we needed to consider that to develop some of the classes, and then also in some of the assistance we provided in laying on the—

Mr. CHABOT. My time is just about out. One final question: Did they consider this? Were they aware that this was a high-risk operation? By high risk, I mean likely to take casualties on either side.

Major PETREE. I can only answer as to what I saw in terms of what they were planning and what assistance they asked us for around that area in terms of medevac planning.

Mr. MCCOLLUM. Thank you, Mr. Chabot. I do not think he could answer further.

Mr. Watt?

Mr. WATT. Thank you, Mr. Chairman.

I want to address a question to Ambassador Holmes, General Huffman, and Colonel Lindley in particular. Some of the members of these two committees think that these hearings are a massive waste of taxpayer money and designed for a political objective, rather than a legislative objective. I was happy to see that Mr. Lantos at least started to talk about the notion of having some legislative connection, as opposed to a lot of the witch hunt that we have been on during the course of these hearings.

I take it that your connection with this is that you provided military support or involvement to some extent, and some people have questioned whether that stepped across the line in some way to get you into law enforcement as opposed to military conduct. Is there any one of you three gentlemen, who I think are lawyers and assistant secretaries, who believe that you in any way stepped across a legal line that the military should not have stepped across in this episode in any way?

Ambassador HOLMES. Absolutely not.

Mr. WATT. Colonel Lindley and General Huffman.

General HUFFMAN. Congressman, I do not.

Colonel LINDLEY. No, absolutely not, sir.

Mr. WATT. Would the three of you say that the guidelines, which basically defined what those limits are between the military and law enforcement, worked as they were designed to work in this particular case?

Ambassador HOLMES. I think the guidelines are clear and they worked, based on my examination of the record. Of course, I was not at the Defense Department at the time.

Mr. WATT. General Huffman.

General HUFFMAN. I was not a personal participant, either, but based on my review, everything worked the way it was supposed to work.

Mr. WATT. Colonel Lindley.

Colonel LINDLEY. It worked the way it was supposed to work, sir.

Mr. WATT. Does any one of the three of you think that there is any kind of legislative response that these two committees or that the Congress of the United States should be making to further clarify the line between the military and law enforcement to address any abuses that took place in this process?

Ambassador HOLMES. I have no suggestions in that regard. I think the guidelines are very clear.

Mr. WATT. General Huffman.

General HUFFMAN. I have no suggestions.

Colonel LINDLEY. No suggestions, sir.

Mr. WATT. Thank you.

I have some question about whether these witnesses have any knowledge of these documents, just as they did not seem to have any knowledge of the documents that Mr. Chabot was introducing. But I would submit for the record the statements of a number of individuals who were actually on the helicopters who deny that they fired at any point.

Mr. MCCOLLUM. Without objection, so admitted.

[The information referred to follows:]



April 20, 1993


On the morning of February 28, 1993, I was pilot in command of a UH-60L helicopter assigned the task to act as a diversion while ATF personnel approached the Mount Carmel compound outside of Waco, Texas.

At approximately 0945 we approached the compound from the Northeast following two OH-58 helicopters. We began to receive gunfire on the approach but at no time returned the fire.

My helicopter was not armed nor did any of the crewmembers carry weapons. The ATF agents we were transporting carried side arms but at no time did they discharge said weapons while on board the aircraft.

The aircraft, SN 91-26319, carried external fuel pods and flew with all doors closed making it impossible to discharge weapons from the passenger compartment.

I submit that these statements are true and correct.

  
Stanley S. Huntley  
CW4, AGTX-CD

SWORN STATEMENT			
For use of this form, see AR 190-45; the personnel agency is Office of The Deputy Chief of Staff for Personnel.			
LOCATION AAASF [REDACTED] TX 78723	DATE 20 APR 93	TIME 1530	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME STONE, JR. DOYLE LEWIS		SOCIAL SECURITY NUMBER [REDACTED]	GRADE/STATUS W3
ORGANIZATION OR ADDRESS HHC, AVN BDE [REDACTED]		AUSTIN, TX 78723	
I, <u>DOYLE L. STONE, JR.</u> , WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH.			
<p>ON FEB 28, 1993 AT APPROX. 0945 I WAS FLYING AN OH-58 (70-15246) AS PILOT IN COMMAND WHILE SUPPORTING ATF DURING OPERATION "TROJAN HORSE". OUR MISSION WAS TO CREATE A DIVERSION TO ENABLE ATF AGENTS TO SERVE A WARRANT AT A LOCATION APPROX. 8 MILES SOUTHEAST OF WACO, TX.</p> <p>WE APPROACHED THE LOCATION FROM THE NORTH AND WHEN WE WERE APPROX. 300 METERS FROM THE TARGET, WE RECEIVED SMALL ARMS FIRE SUSTAINING A HIT IN THE TAIL OF THE AIRCRAFT. THE TWO OTHER AIRCRAFT IN THE FLIGHT ALSO RECEIVED GUNFIRE DAMAGE FROM THE TARGET LOCATION. ALL AIRCRAFT IMMEDIATELY TURNED AWAY FROM THE SOURCE OF FIRE AND FLEW NORTH.</p> <p>THERE WERE NO WEAPONS ON BOARD MY AIRCRAFT AND THERE WAS NO WEAPONS FIRE FROM ANY OF THE AIRCRAFT IN THE FLIGHT.</p> <p>/// / / / / / Nothing Follows / / / / /</p>			
<div style="text-align: center;"> </div>			
EXHIBIT	INITIALS OF PERSON MAKING STATEMENT [Signature]	PAGE 1 OF	PAGES
<p>ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE [REDACTED] OF [REDACTED] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.</p>			

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SWORN STATEMENT			
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LOCATION AAASF [REDACTED] TX	DATE 20 Apr 93	TIME 1530	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME DICKENS, BRIAN WAYNE	SOCIAL SECURITY NUMBER [REDACTED]		GRADE/STATUS O3/ADSW
ORGANIZATION OR ADDRESS RAIO			
I, <u>Brian W. Dickens</u> , WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH.			
<p>On 28 Feb 93, I was pilot in command, of the lead aircraft of a flight of three, for Operation Trojan Horse near Waco, TX. Our mission was to provide a diversion to the North of the objective with the noise of the aircraft. We were also a command and control aircraft with Phil Wjaski, of the ATF, on board to observe the issuing of the warrant. While approaching the objective, our aircraft received gunfire, turned away from the objective, and departed to the north. My aircraft, 15303, was carrying myself, a National Guard member, Lee Finch also a National Guard member and the ATF agent listed above. Neither myself or Lee Finch had a weapon. The aircraft had no weapons. The ATF agent on board had his sidearm with him, but it was not fired. All of the doors were on the aircraft and restricted a weapon from being fired.</p> <p>--- / Nothing Follows / ---</p>			
EXHIBIT	INITIALS OF PERSON MAKING STATEMENT <u>[Signature]</u>		PAGE 1 OF <u>1</u> PAGES
<p>ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [NAME] TAKEN AT [LOCATION] DATED [DATE] CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE [ ] OF [ ] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.</p>			

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Mr. WATT. I will yield back the balance of my time.

Mr. MCCOLLUM. Thank you very much, Mr. Watt.

Mr. Blute, you are recognized for 5 minutes.

Mr. BLUTE. Thank you, Mr. Chairman.

At this time, I would yield my 5 minutes to Chairman Zeliff.

Mr. ZELIFF. And I will yield to Mr. Chabot.

Mr. CHABOT. Thank you. I will try not to use up all the time. I appreciate that, Mr. Chairman.

Just a couple of followup questions to Major Petree here. I have got a document that I would like to have delivered to you at this particular moment, in light of the testimony about casualties. At the top of the document, it says "Scenario," and in the right-hand corner it says "D1159," meaning we got this from the Defense Department. I would like to bring your attention to item number 6 and item number 7.

Item number 6 says, "DLEA recognizes that casualties are probable." Item number 7 says, "Casualties will be DLEA, bad guys and civilians." I am just wondering, have you ever seen this document before?

Major PETREE. No, sir, I have never seen it.

Colonel LINDLEY. Congressman, could I interrupt and clear up something for the record?

Mr. CHABOT. That was going to be my next question. Is anyone else at the table aware of this particular item?

Colonel LINDLEY. I am the author of this, sir. What happened in this situation, approximately 2 weeks after we became aware that the mission 002 ECHO had in fact been the Waco operation, I was tasked by the Staff Judge Advocate at Special Forces Command to conduct a continuing legal education seminar for our group attorneys for other special forces groups that would be rotating through JTF-6.

I have taken liberties with the situation to use this as a training event for the attorneys within Special Forces Command. This was part of a teleconference that went out. It is true that I used the rough fact basis that occurred out at Waco, TX, but I elaborated on that a little bit for professional development with my attorneys and to engage in a discussion back and forth in the area of statutory interpretation and development.

Mr. CHABOT. Let me ask another question here. Major Petree, it is my understanding that you were at a meeting—I believe February 1, 1993—and that there were casualties discussed at that meeting. Is that potential casualties at Operation Alliance?

Major PETREE. At Operation Alliance, and I think the date was 2 February. I may have given the staffers the wrong date.

Mr. CHABOT. February 1st, but if it is 2nd or 1st, I think that is fine. It does not matter too much.

Major PETREE. Once again, at that time it was put to us and couched in the terms of eventuality—not eventuality, but the possibility. It was couched to us in terms of "in case of casualties."

Mr. CHABOT. What type of casualties are we talking about?

Major PETREE. I think at that point it was not so much whether it was LEA or whether it was so much residents or somebody with a weapon. As we understood it, we were discussing types of wounds and we were discussing age groups.

Mr. CHABOT. I am not trying to get tricky here or anything. I am not talking about auto accidents and things. We are talking about potential gunshot wounds, I would assume.

Major PETREE. Yes, sir.

Mr. CHABOT. Who raised the issue? Did ATF raise the issue, or did the military raise the issue?

Major PETREE. I would describe the 2 February meeting—and I used this phrase before—as essentially a horse blanket—because I think it was at that point a search on their part as to what support the military could provide. As they were going down a long list of things, they came across medical support, and that was both on-site, planning for, coordinating for, possible equipment to support it in terms of both medevac and emergency trauma treatment.

Mr. CHABOT. Thank you.

Officer Fitts, if I could just ask you a question. It is my understanding that you taught the ATF members proper ways to carry the casualties. Is that right?

Sergeant FITTS. We discussed it, yes, sir.

Mr. CHABOT. I am sorry, I could not hear you.

Sergeant FITTS. We discussed it, but we never actually went through hands-on, but it was discussed.

Mr. CHABOT. What was discussed?

Sergeant FITTS. Just that proper carries and the way to carry the casualties from the site back to the first-level care.

Mr. CHABOT. And what type of casualties are we referring to here in all likelihood?

Sergeant FITTS. Gunshot wound casualties, sir.

Mr. CHABOT. It is my understanding that you actually contacted a local ambulance company about this matter to be on standby or to get additional assistance, if it were necessary?

Sergeant FITTS. Yes, I contacted an ambulance company to find out their availability of having an ambulance onsite during the day.

Mr. CHABOT. And I assume that is because that it was very possible that there might be fairly heavy casualties in this action?

Sergeant FITTS. Sir, when you are planning a medical evacuation, you plan for the worst case scenario at all times.

Mr. CHABOT. And it was not the worst case scenario that happened here necessarily, but it was a pretty bad scenario.

I think my time is up.

Mr. MCCOLLUM. Mr. Chabot, I was going to say your time is up.

Mr. CHABOT. Thank you.

Mr. MCCOLLUM. Ms. Lofgren, I believe you were—

Mr. SCHIFF. I am sorry, Mr. Chairman. Before you return to Ms. Lofgren, I wonder, since Colonel Lindley has identified the document that was referred to, I would ask unanimous consent that it be made a part of the record.

Mr. MCCOLLUM. Without objection.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Ms. Lofgren, would you like to take up your 5 minutes?

Ms. LOFGREN. I do not think I will take my whole 5 minutes, as most of my questions have been asked and answered.

Following up in a sense on my colleague from California's question earlier about the role of the military forces in our country in civilian disorder in the future as the world becomes more complicated, I think one of the things that has kept our country strong and safe—and every military person I have ever met agrees—is the civilian control of the Armed Forces and separation of the military from civilian patrol of law enforcement.

I know that the posse comitatus does maintain that distinction between patrol and the like. As I have listened to the detailed collaborative efforts that were made, that were clearly consistent with what the law requires, it occurs to me to what extent you all were invited to suggest alternatives to the plan that you were asked to collaborate on, train for, or prepare for.

Earlier in the panel preceding you I asked, given the factual situation—as I think any reasonable person would have known it by the time of the final day in April, we were dealing with a cult figure who had pretty obviously beaten babies and raped children and was in charge, had controlled really the will of people—and whether or not an armed assault was likely to resolve the situation. I think it was engaged in in good faith, but obviously it did not work.

And whether you were asked for advice on alternative plans, given the vast resources the military has in psychological fields and the like—probably greater than what is available to civilian authorities. If you were not asked that, do you think that is a proper training role for the military to consider in the future?

General HUFFMAN, do you have a comment, or whoever has a comment on this, I would appreciate it.

General HUFFMAN. I have no knowledge that the military was asked for any alternative plans. I certainly do not know whether the military advised on any alternative plans. As has been pointed out, this was a civilian law enforcement agency operation. They have the expertise. They asked us for specific support under the law and it was provided.

Ms. LOFGREN. And you gave it.

General HUFFMAN. Yes.

Ms. LOFGREN. Ambassador Holmes, given that this was the training and a resource inquiry, in the future, do you think it would be inappropriate to include the larger resources of the Armed Forces in terms of psychological understanding? I understand there is some depth in our Armed Forces in that field to deal with a cult situation such as this in the future. Or do you think that would cross that line that none of us want to cross in America?

Ambassador HOLMES. I do not think it would necessarily cross the line, but I feel it important to say before this committee, just to remind everybody of the obvious: that the primary role of the Armed Forces of the United States is to fight and win our Nation's battles. And where we can provide support to civil authorities across a range of activities, which we have been doing for many years, we will always try to do that and play our part. But we are not looking for additional roles.

Ms. LOFGREN. I understand that. I am a newcomer to the Congress, but I have just been reviewing some of the things that Congress has asked you to do in the last number of years—get involved

in drug interdiction, get involved in certain other consultative—it is not coming from you, but the Congress is asking the military to be a resource. Frankly, the terrorism bill that is on its way to the floor expands that role to some extent, so these are things that—

Ambassador HOLMES. That is an important bill for the administration, obviously.

Ms. LOFGREN. Does anyone else on the panel have a comment? If not, I will yield back what is left of the time.

Mr. MCCOLLUM. Thank you very much, Ms. Lofgren.

Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

I know we have a vote pending, but I wanted to take just a minute or two. First of all, I want to commend all of you that serve in the military and apologize in a way that you have to be here, but this is the way the system works. It is really a kind of neat system to see it work with all the protections that are built in, and that is really the reason for this hearing.

You know, you heard earlier some of the members testified that from the very beginning Americans have been concerned about the military becoming involved in civilian law enforcement. The only instance I understand that you can become involved is when there is a drug case, and we have set some parameters in that. Is that correct, Ambassador, except in disasters and things like that?

Ambassador HOLMES. No; I was going to say it really is not. There is a wide panoply of activities established under law for our support, and they can be anything from manmade to natural disasters to emergencies.

Mr. MICA. In this particular instance, the pretense under which you went into this Waco situation was under a drug—

Ambassador HOLMES. Yes, that legislation began in 1989, and that is under the counter drug support legislation.

Mr. MICA. The thing that disturbs me—and you know we had the sheriff or deputy sheriff sitting at the other end, and he said there had been no evidence of a drug lab there for some time. Do you not feel a little bit—sort of duped by the information that you were given?

I do not want to say anyone here acted improperly, because you all did and you followed a chain of command. But now that it has taken place, it does not appear that there was that threat.

Ambassador HOLMES. Based on my secondhand knowledge of the situation, I have to say that our people have to react to the situation and to the circumstances at the time. And at the time they did receive advice from Operation Alliance based on the—they took orders and they took a request.

Mr. MICA. Let me ask you about the request, if I may for just a second. You know, you said you have this alliance or council that makes the decision.

Ambassador HOLMES. Operation Alliance.

Mr. MICA. Is this a committee decision, or is there a military or civilian person that really signs on the dotted line? I kept hearing you say Washington approved or the alliance approved. Is it the military? Who makes that decision?

Ambassador HOLMES. I would ask General Pickler to answer that question.

Mr. MICA. I do not know and I really want to find out.

General PICKLER. Sir, there is a comprehensive process, as you might expect, for the receipt and processing of support requests for military.

Mr. MICA. Sir, who is the ultimate signatory to that? Are there many signatures, if I look at it? Are there many people who sign off on it?

General PICKLER. There should be an audit trail of signatures, but requests can also come into Operation Alliance of a verbal nature. But when we received the BATF request for military support from Operation Alliance, the Military Support Working Group, which consists of four primary representatives from Operation Alliance; it is headed by one of the principal top-level law enforcement agents, that is DEA, Customs or Border Patrol; that heads up the Military Support Working Group. There is another Federal agent in that working group. There is a State law enforcement agent and there is a local agent.

Mr. MICA. There is no one then we can pinpoint like a single responsibility, everyone signing off?

General PICKLER. Sir, that report request from that particular operation was signed off from Operation Alliance by a member of the MSWG organization.

Mr. MICA. Was he military or civilian?

General PICKLER. Civilian, sir.

Mr. MICA. You see, what I am trying to get at is, is the procedure correct, are we doing things, is somebody looking at this. There were women and children here that were totally innocent and four agents who were killed, and our intent is to see that that does not happen again.

Again, I appreciate what you all have done. You have been put in a terrible predicament. But the process of the system and the reason we are here today is to make sure it does not happen again and to construct it so that we have those protections.

I thank you, and I yield back to the chairman.

Mr. MCCOLLUM. Thank you very much, Mr. Mica.

I think we are about at the point of a vote at this juncture, and most of your time had expired at that time. I have a couple of questions I think I will get to ask later on down the road, but thank you for yielding.

I am going to recess this hearing, but we are going to have a vote. I understand there are going to be four votes, one 15-minute vote followed by three I believe other 5-minute votes. So I would suggest that we are going to have a break of at least 30 minutes here, maybe a little longer, but the witnesses should know that. We will get back as quickly as we can. I ask the members to be back within 5 minutes of the conclusion of the final vote.

Ambassador Holmes.

Ambassador HOLMES. I just wonder if the chairman could give us some indication of how long we will be here. I am supposed to be going to Special Operations Command for an important strategic conference this evening.

Mr. MCCOLLUM. I can understand that. I believe that we probably would not have more than 30 minutes more roughly when we get back. I guess that you are talking though because of these



votes, of not getting out of here before 6. If that presents a major problem, we can discuss it.

Ambassador HOLMES. If we can get out by 6, I can make my plane. Thank you.

Mr. MCCOLLUM. We will do our best. Thank you.

The hearing is in recess.

[Recess.]

Mr. MCCOLLUM. This hearing of the joint subcommittees will come to order.

When we had our recess a few moments ago, we were in the process of completing questions of this panel of the military relative to their knowledge of the Waco incident. I believe at this point in time we are ready to ask if Mr. Heineman has a question or two. You have 5 minutes, if you would like, Mr. Heineman.

Mr. HEINEMAN. Thank you, Mr. Chairman.

At this time, I would like to yield my time to the gentleman from Tennessee Mr. Bryant.

Mr. BRYANT of Tennessee. I thank my colleague.

As a lifetime career of law enforcement officer from New York and North Carolina presently serving in the Congress out of North Carolina, I thank the gentleman for yielding time to me.

Let me ask Major Petree, if I could, are you familiar with the term, and is it a military term that you are used to using, "dynamic entry?"

Major PETREE. No, sir.

Mr. BRYANT of Tennessee. It is not a military term?

Major PETREE. No, it is not.

Mr. BRYANT of Tennessee. And are you familiar with it now?

Major PETREE. Yes, sir, now.

Mr. BRYANT of Tennessee. As a result of these hearings?

Major PETREE. Yes, sir.

Mr. BRYANT of Tennessee. Have you heard about that through the ATF or anything?

Major PETREE. I do not recall. I do not remember hearing the phrase "dynamic entry" through ATF.

Mr. BRYANT of Tennessee. OK.

Major PETREE. This is the first time I have heard of it.

Mr. BRYANT of Tennessee. All right. I met most of you during the break and I want to add my congratulations and commendation to all of you, especially some of you that may not be as familiar with testifying before a congressional committee as your superiors are. You all are holding yourselves very accountable, and I appreciate that very much. You are a fine example of our new volunteer Army and you have all obviously progressed a great deal in the military.

I was out just briefly during part of the testimony of Staff Sergeant Fitts. I understand your MOS is a paramedic?

Sergeant FITTS. Close equivalent of paramedic, yes, sir.

Mr. BRYANT of Tennessee. You have medical training. As a part of this process of dealing with ATF, I understand you were assigned to draft a plan under the contingency that it would be a raid and perhaps there was a methamphetamine lab in there and what should occur in case there was an accident.

Sergeant FITTS. My planning for the ATF did not include a methamphetamine lab. It was just for the day's events to establish some

sort of network to get the wounded out of the area and back to a higher treatment facility as quick as possible.

Mr. BRYANT of Tennessee. As I understand, you were tasks with that job by your superior officer to draw up a contingency plan from the medical standpoint, because there is a higher risk of danger, is there not, to raiding, if you will, using a dynamic entry into a facility that has a methamphetamine laboratory in it?

Sergeant FITTS. Yes, sir.

Mr. BRYANT of Tennessee. That is kind of a long question, but you understand. And the risks associated with it, if there were a bullet shot into it or some type of cause of it to explode, it could be a danger especially to children, to older people, to people around it?

Sergeant FITTS. I think there would be danger to all people, regardless of age.

Mr. BRYANT of Tennessee. You did draft this plan of evacuation, medical treatment or whatever. As I understand, you presented it to certain ATF people at a meeting.

Sergeant FITTS. The thing that we presented at the meeting in Houston was a research paper that I had done previous to that about the dangers and cautions Special Forces should take if they encounter a methamphetamine lab. The thing about the medical evacuation work was done after the Houston meeting, and that concerned mainly points of contact and giving my advice of what I felt they needed as far as medical evacuation was concerned.

Mr. BRYANT of Tennessee. So the paper that you gave to the agents with ATF concerned the dangers that we have talked about already?

Sergeant FITTS. Yes, sir, the same dangers.

Mr. BRYANT of Tennessee. Then I understand you had a subsequent meeting on the heels of this meeting in which there was never a discussion in that meeting, and as far as you were concerned it was never discussed again in terms of that laboratory?

Sergeant FITTS. The meeting was over a 2-day period in Houston. I considered it as one meeting, and I never again discussed the methamphetamine lab with the agents.

Mr. BRYANT of Tennessee. I guess my question was did you ever hear the ATF agents talk to you about the lab being there? I got the impression that basically you understood that subject just dropped off the earth.

Sergeant FITTS. That was my impression, sir. But as I stated earlier, I was trying to do research with a book they had listing the people inside the compound, so I would know what kind of evacuation, extraordinary measures that might be needed at the site when the raid went down.

Mr. BRYANT of Tennessee. I think that is fair enough. You all were not here yesterday when I expressed my concerns, much as many on this side have, that none here is condoning what went on at Waco in terms of Mr. Koresh and how he responded to this. It was totally irresponsible in terms of firing back at these agents. It should not have occurred and he should not have abused these children, if that is what he did, and I assume he did. We got testimony there.

On the other hand, there were mistakes made on the other side. There were 20 other children that died as a result of the second dynamic raid. As Congress, we have oversight and it is our job to oversee these Federal agents and make sure that what was done was proper.

If there was error, if there was a mistake, that we correct that so that we do not have another Waco, and that is the intent of this hearing. I think we are making some good progress on that, and I want to commend each one of you for your testimony and thank you for making your appearance today. You have added a great deal to this hearing.

I yield back the balance of the time.

Mr. MCCOLLUM. Mr. Bryant, your time has expired, or Mr. Heineman's has in this case.

Mr. Barr, you are recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

I would like to yield my time to the Chairman Zeliff.

Mr. ZELIFF. Thank you, Mr. Barr.

General Pickler, I overheard you say something about verbal approvals. Is that the case, or did I misunderstand in terms of some requests for military assets?

General PICKLER. No, sir, I did not say verbal approvals. I believe I intended to say that there were verbal requests and discussions of missions that took place.

Mr. ZELIFF. But not verbal approvals?

General PICKLER. Not verbal approvals, no.

Mr. ZELIFF. You have made me feel a lot better about the process.

Ambassador Holmes, did you ever receive any funding from the drug interdiction effort relative to Waco, the use of military assets at Waco in terms of interdiction money?

Ambassador HOLMES. No, to the best of my knowledge. I was not on board at the time, but I have no knowledge of that.

Mr. ZELIFF. I guess my real question is did any drug interdiction money get used, did any assets get charged off to drug interdiction efforts for the assets that were used at Waco that you know of? If not, if you could get back to us.

General PICKLER. The JTF-6 actions were all limited to general support training in the mobile training team context that you have heard testified before all prior to the events of 28 February. From a JTF-6 perspective, I know of no counterdrug moneys that were devoted to that other than the ones that have been described in the context of JTF-6 support by the Rapid Support Unit, sir.

Mr. ZELIFF. Was there to your knowledge any foreign national military personnel on the scene at Waco?

Ambassador HOLMES. I have no knowledge of that.

Mr. ZELIFF. If that should change, if you would let us know, we would appreciate it.

Ambassador Holmes, the Secretary of Defense indicated in a May 17, 1995, memorandum that the current system to provide DOD assistance to law enforcement agencies is encumbered by conflicting directives, multiple entry points and diverse funding authorities. The clerk will pass out document 6. Were there any problems with the loaning of DOD equipment during the Waco incident?

Ambassador HOLMES. I am not aware of any problems in either phase one or phase two.

Mr. ZELIFF. The clerk should also pass out document number 5, and that is a message from the commander of Army Material Command, dated March 11, 1993. The relevant part says, "It now appears that the military has loaned equipment without the approval of the Pentagon." Yesterday, the Pentagon and the White House were severely embarrassed because they heard the news first from CNN. I guess we all find that out once in a while. "If queried by any agency, Federal or otherwise, for assistance on any type in connection with the Waco, TX, operation, you need to request approval from this headquarters and we will then coordinate with the Pentagon."

Apparently, there is also document number 4 which is a handwritten note and it has been redacted, but there is some question as to what the ground rules were or what our involvement was. I guess it is just an open comment. Do you care to comment on any of those documents?

Ambassador HOLMES. The only document that I am very familiar with is 6A, which is the document signed by Secretary Perry on military support to civil authorities, and the attached document signed by my immediate boss, Under Secretary Walt Slocombe, which basically assigns me the responsibility for conducting a review ordered by Secretary Perry.

Mr. ZELIFF. This is my last question. The amount of assets that were used at Waco included UH-1 helicopters, 10 M2A1 Bradleys, 2 main battle tanks Abrams, 2 HMMWV's, 3 CH-47's, and 3 UH-1 helicopters and standby. In addition, the Texas Army National Guard support included 10 Bradley fighting vehicles, 5 combat engineer vehicles and 12 HMMWV.

I would like to say that on September 14, 1993, General Montgomery requested only 4 Abrams and 14 Bradleys for support of troops in Somalia, and the tragic end of that request was no, and we gave more military hardware to Waco than we did to support and could have prevented perhaps those 18 deaths which were tragic. I do not necessarily expect a comment, except anything that you would like to add. It just seems that it is a tragedy that the decisionmaking—

Ambassador HOLMES. I have no comment.

Mr. ZELIFF. Thank you very much.

Mr. TAYLOR. Would the gentleman yield?

Mr. MCCOLLUM. The time of Mr. Zeliff has expired.

Mr. Taylor has asked you to yield, but his time is up, Mr. Taylor. He does not have time to yield.

Mr. Souder.

Mr. SOUDER. Thank you, Mr. Chairman.

I, too, want to thank all of you for coming. I have always been proud of my Uncle Bud who is a Green Beret with A Team Special Forces and I am really proud that you are there to defend our liberty.

I think part of the problem with this is it is very scary to see all of you at a panel on a domestic issue, because that is one of the things that we are very concerned about in the founding of our country, because you are the best and brightest fighters and that

is partly why we are doing this examination, not to critique you so much as to say you are used properly.

I have been getting all kinds of calls in my office and people handing me things, and it is very difficult to verify what things are true and what things are not true. But I wanted to ask Mr. Moreland a very specific question. I am sorry I cannot verify it and I want to ask you personally under oath. Did you recently say to a fellow member of the Army something to this effect: "I don't care, I am getting out of the Army anyway. When I go up there and they put me under oath, I am going to tell everything that went wrong."

Sergeant MORELAND. No, sir, not to my knowledge.

Mr. SOUDER. I assume that is an honest answer, and I am sorry that I put you through that. But we get these in and I wanted to ask you the question, and I appreciate your honesty in the answer.

I yield the rest of my time to Mr. Schiff.

Mr. SCHIFF. I thank the gentleman for yielding.

Colonel Lindley, I would like to go back to this scenario that you drew up, and I understand it was for future training. But one of the premises here is that the domestic law enforcement agency wanted to take down a lab, meaning a methamphetamine lab. Is that the premise of the Waco mission as you understood it?

Colonel LINDLEY. Yes, sir. In fact, that was the only issue, was the issue of the methamphetamine lab. The guns came up later.

Mr. SCHIFF. The guns came up later?

Colonel LINDLEY. Yes, sir.

Mr. SCHIFF. I just wanted to say that I think that shows a smoking gun here, at least, and I can assure everyone I am making no pun in that. We have the fact that although no law may have been violated, the fact is that the Alcohol, Tobacco and Firearms department was in so much of a hurry to get military support, that they knew that they were not going to get military support at least from Joint Task Force Six unless there was a drug connection. What they did was create the drug connection, because without the drug connection, there would have been no military support to their operation. I think we have established that through these two panels.

I think taking it further for just a second here, we can add to that that if you add other factors, you show that the Alcohol, Tobacco and Firearms department could not wait to hold a military-style raid, that that was their goal at a certain point and nothing could dissuade them.

We have the fact just established, I think, that they misrepresented the mission as a drug mission to get the military support and the Joint Task Force; second, that they made no effort to arrest David Koresh outside of the compound, which, by the way, would have provided the best opportunity to save the children inside the compound, which we started hearing from these panels became a major thought in this raid.

Of course, that was not their major intention. Their major intention was a firearms violation. That is what the arrest warrant and the search warrants say. They turned down the offer made by David Koresh to come into the compound and look around, which they should have done even if they were not going to find any illegal firearms, just to look at the inside of the premises.

Their preparation was so poor that their surveillance team was spotted because a bunch of 40-year-olds in expensive cars do not look like college students. They went ahead when surprise was lost. They were rushing to get the media there, because the tip to the mailman, who was a Koresh supporter, was from a news truck that was looking for the Waco site. And it was only ATF who could have told the news media to be there.

I think you put all this together and it shows exactly like what Mr. Morrison of the Los Angeles Police Department essentially said, that poor management by the Bureau of Alcohol, Tobacco and Firearms put their own agents into an unconscionably dangerous situation.

With that, Mr. Chairman, I yield to you any remaining time.

Mr. MCCOLLUM. Thank you very much for yielding.

I want to ask one question of you, General Pickler. With respect to JTF-6, am I understanding correct from the very beginning of these hearings—and I think this is an important point to be made—that if it were not for the drug connection, your particular unit, JTF-6, would not have been under the rules of the Army or your rules and permitted to be training ATF as they did before the Waco raid? Am I correct that is what you said to us early on in this process?

General PICKLER. Yes, sir, I did say that. If it were not for some kind of drug connection, we would not have been participants or we would not have trained the agents.

Mr. MCCOLLUM. Mr. Taylor.

Mr. TAYLOR. Mr. Chairman, that seems to contradict the answer that I received when I asked if a local law enforcement agency were to ask them with some help in training in how to best storm a building that they suspected was heavily armed. The answer was yes, we would provide that.

Mr. MCCOLLUM. I want to get that clarified. Is it not also correct, or do they contradict each other?

General PICKLER. The answer that was given, I believe, by the DOD representative was that there is support that can be provided. In the context of this particular mission, if it had come to our attention that there was no drug connection, we would have referred that support request properly to the Department of Defense for their consideration of support.

Mr. MCCOLLUM. But this particular unit was not, under the rules of the Army or DOD, permitted to give training to anybody that did not have a drug support connection like this, is that right? That is what we are talking about. If it had not been for the drug support, your particular unit would not have been permitted to train them?

General PICKLER. That is correct, sir.

Mr. MCCOLLUM. I think that is a very important clarification.

The time on this particular round has——

Mr. TAYLOR. Mr. Chairman.

Mr. MCCOLLUM. Yes, Mr. Taylor.

Mr. TAYLOR. Again, for the record, a parliamentary inquiry. You very specifically said his particular unit JTF-6 would not have been used. Is it also not correct to say, though, that DOD in general——

Mr. SHADEGG. I object.

Mr. MCCOLLUM. Reclaiming the time of the Chair for a minute, for the purposes of clarification and not to yield to Mr. Taylor, but I think I will satisfy him, I ask unanimous consent to have 3 minutes specifically to clarify this point. Is there any objection to that? If not, I would like to ask the questions of Ambassador Holmes and General Pickler.

Let us go over this step-by-step very briefly. Anybody coming to you from another law enforcement community asking you for assistance, it would not be illegal for the Department of Defense to provide that, whether it had a drug connection or not, under the posse comitatus law. Is that correct, Ambassador Holmes, in general?

Ambassador HOLMES. In general, that is correct. I think I can clarify that JTF-6 is specifically set up to respond to requests from law enforcement in the prosecution of the drug war.

Mr. MCCOLLUM. What happens if somebody comes to you as a matter of policy? Now, we talked about law, let us clarify that. Is there any policy in the Department of Defense or in the Department of the Army, which perhaps General Pickler or somebody else would know about more definitively than you would, Ambassador Holmes, that would prohibit any unit other than this particular one JTF-6 from responding to a request for assistance, as a policy matter, not a legal matter, whether or not there was a drug connection?

Ambassador HOLMES. In the drug—

Mr. MCCOLLUM. No, not in the drug war. Forget the drug war. Let us say there is no drug war or no drug issue involved, and you get a law enforcement agency of the Federal Government, the FBI, ATF, anybody coming to you asking for assistance, and there is no drug connection in training or in preparation or in providing equipment, not operationally, would you be able to provide that under the policies that existed in DOD and the Department of the Army at the time the request was made by the ATF concerning the Waco situation?

Ambassador HOLMES. Yes, to the best of my knowledge, that is correct.

Mr. MCCOLLUM. You would have been—

Ambassador HOLMES. Obviously, every request is vetted and looked at depending on the basic question.

Mr. MCCOLLUM. But there was no inherent regulation or policy restriction otherwise?

Ambassador HOLMES. No. In fact, it is authorized by act of Congress, this kind of support.

Mr. MCCOLLUM. But JTF-6 was a particular unit designed to work with the drug issue, is that correct, General Pickler?

General PICKLER. That is correct within the southwest border region, whose limits are defined not only geographically, but also as the southwest border high-intensity drug trafficking area, the southwest border.

Mr. MCCOLLUM. And that is all you did is work with the drug question?

General PICKLER. At that time, sir, the limit of our support was to Federal, State and local law enforcement agencies, title 10 support within the southwest border region.

Mr. MCCOLLUM. But you had other missions besides that inside the Army, or was that the sole mission of JTF-6?

General PICKLER. It was the sole mission.

Mr. MCCOLLUM. It was the sole mission. That is what I wanted to know. I think that has clarified it. I think that has taken plenty of time.

Mr. Zeliff.

Mr. ZELIFF. I just have one quick question.

Mr. MCCOLLUM. On that same unanimous consent, I will yield to you to clarify that.

Mr. ZELIFF. I want to clarify one quick question, and I think I may have asked the wrong person. Mr. Crain, was the money used for Waco training previously designated as a counter drug fund for JTF-6?

Mr. CRAIN. Sir, I am not a budget guy. I am not fully able to talk about budget issues. I can state that our support to JTF-6, Special Forces Command support to JTF-6 is funded by FORSCOM P2CD dollars and—

Mr. ZELIFF. Which is?

Mr. CRAIN. Drug money, sir.

Mr. ZELIFF. I was trying to get to that.

Mr. CRAIN. Any other support that we provide to other agencies is handled separately, but JTF-6 support is paid by the—

Mr. MCCOLLUM. I think the question by Mr. Zeliff needs one followup to make it real clear. If an agency of the Federal Government or a law enforcement agency generally, comes to you seeking assistance, equipment, or training—forget the drug question for a moment, if the drugs are not involved and it is not JTF-6 or whatever—is there a requirement in the interagency rules, or by regulations, or by law that that other agency or its parent reimburse the Department of Defense or the military agency for the cost of that equipment and training?

Ambassador HOLMES. Generally speaking, this kind of support is reimbursed, but under certain circumstances it can be waived.

Mr. MCCOLLUM. But in the case of the drug support effort that JTF-6 provided, there would be no reimbursement required under law?

Ambassador HOLMES. That is funded by Congress.

Mr. MCCOLLUM. Thank you.

Mr. ZELIFF. So whatever we have spent on Waco training costs came out of the drug interdiction component of the Nation's drug war?

General PICKLER. Yes, sir, those funds are funneled from the Department of Defense through the Department of the Army as a funding mechanism to Joint Task Force Six to pay for that support that was provided under the execute order.

Mr. ZELIFF. I understand. Thank you very much.

Mr. MCCOLLUM. Thank you very much.

Mr. ZELIFF. So the answer to that question is yes, for the record.

Mr. MCCOLLUM. I want to recognize Mr. Bryant, and then you have your 5 minutes.



Mr. BRYANT of Tennessee. Thank you, Mr. Chairman.

I yield my time to Mr. Buyer.

Mr. BUYER. Thank you, Mr. Bryant, for yielding to me.

In conclusion, I have a few comments that I would like to make. First of all, I would like to thank each of you for coming. Colonel Lindley, I know that you come from Japan to be here. Major Petree, you have come from Hawaii. You have come a long way also to be here. General Huffman, you have missed a wedding to, in fact, be here. And many of you have missed other things. So we extend a thank you to you.

Also Sergeant Dunn, I think you probably have to be thankful to help clear your name. Your name has been in a lot of different magazines and stuff, and hopefully you have had that opportunity now to, in fact, clear your name and that you were not there at the raid day, as a lot of some like to write.

That is the purpose of these hearings, to get a lot of that out in the open. I appreciate your candor and your willingness to testify here today. I think part of the testimony has been very clear. What is clear is today we had the DEA testify that they were never contacted for assistance. With the regard to use of a FLIR to detect a methamphetamine lab, FLIR being the forward-looking infrared radar, the use of the F-4 flying from Alabama to Texas. They do not do that kind of thing.

Also, it is clear that JTF-6 assumed at face value the presence of the drug lab. I also would say that it is easy to Monday-morning quarterback, and that is not really what our job here is to do. But I am concerned, though, that when two of the witnesses did discover at a Houston meeting that really this was kind of a ruse, that it perhaps was a fabrication, that we really were not concerned about the drug nexus, that maybe they should have kicked that up to the JTF-6, to the command to say, you know, they really should not gain access to all of our training and expertise, they have got other ways to be able to access that. Perhaps that should have been done. That is Monday-morning quarterback stuff, but that is something that definitely concerns me.

I am sure that future commanders of JTF-6, when they get an inquiry from BATF on a drug lab, maybe they might ask a few questions and not just accept things on face value. I see a smile there.

The other issue is all I know is some questions were asked of Ambassador Holmes with regard to should we make legislative changes, and his sort of, gee, I like the way things are does not satisfy me, because I also know that Dr. Perry has appointed you to the off-line task force to look into the open access and how much access really is there to the military to participate in local law enforcement, and that is part of the role. So I think we do need that further review.

I am also one that has some concern here with regard to the posse comitatus statute. We have this statute in place, and it is good policy for our country. No one has ever been prosecuted under the criminal statute. It's almost as if we have so many laws and regulations to know how to skirt around the issue—and Congress is partly to blame in part of this—that we have learned that despite this ruse and fabrication to gain access to the military treas-

ure trove, they did not need to lie in the first place. That is what we learned here today, that there are all kinds of methods and ways to access that military treasure trove. So you did not have to lie, but in fact we had that lie.

So I am pretty concerned. I am concerned when we have the National Guard out there being able to say, well, we are the National Guard, we are outside the Posse Comitatus statute and I want the Federal Government to pay for what I do, I want State control, I will help in the Federal mission, and, by the way, I will pick up the phone and I will call an adjutant general where I have a memorandum of understanding and he will send fighter jets.

You see, when the Founders created the Constitution and when they had a well-regulated militia in mind, you have to remember it was muskets back then that had a range of 100 yards, you know, 150 yards maximum. Today we have States that have power projection capabilities that go far beyond their own State borders. They have more power projection capabilities than most countries. And now we have these State adjutant generals making decisions on memorandums of understandings and never even picking up the phone and calling you, Ambassador Holmes—if I were you, that would kind of concern me—or calling anybody else, whether it is the Guard, Bureau or whatever.

So I think it is pretty good for us to have a review, and for you also in your process here. I compliment the Secretary of Defense for appointing you to this task force to look into the access issues, because I think America here has learned that there was no conspiracy here between you and BATF. There is no conspiracy. There was in fact some falsehood here to gain that military access, which was unfortunate.

I think America can now be surprised on how much access there really can be to the military assistance of local law enforcement, and we here in the Congress can debate a lot of the policy perspectives to that.

Let me thank all of you for coming here today, for clearing the air. It is important. Let me finish by thanking each of you for your service and commitment to the country. God bless you.

Mr. MCCOLLUM. Thank you very much.

I think we have concluded the normal questioning here. I have got a couple of clarifications to announce. First of all, the written testimony that you gave, Ambassador Holmes and that General Huffman gave, will be admitted for the record. So would any other written testimony that you wish to present today. I think there are some documents that have been asked to be put in the record that were used by Mr. Shadegg and Mr. Buyer, and, without objection, they are admitted for the record.

There was a question raised earlier about the clarification on some of the equipment read off by Mr. Zeliff with relationship to being supplied by the military. Those lists for clarification were of the equipment provided not only in connection with this raid on February 28, but also with the final assault day on April 19.

Mr. BUYER. Mr. Chairman.

Mr. MCCOLLUM. Mr. Buyer.

Mr. BUYER. I want to make sure that the National Guard's afteraction report is submitted for the record.

Mr. MCCOLLUM. If no objection, the afteraction report will be submitted for the record.

Mr. BUYER. Thank you.

Mr. MCCOLLUM. Do you need a clarification—

Mr. TAYLOR. Mr. Chairman, a parliamentary inquiry.

Mrs. THURMAN. Yes, I do have a clarification. There have been two clarifications here by Mr. Schiff and Mr. Buyer, and I think we ought to have it on record, because I do not think they ever got an opportunity to respond to their characterization of what happened, and I am kind of curious if they agree or disagree with the way it was characterized.

Mr. MCCOLLUM. I think the clarification of some of the members' characterization, Ms. Thurman, is a little different than the factual part of this. I do not know how I can—

Mrs. THURMAN. I thought we were trying to get to the facts.

Mr. MCCOLLUM. We do, but members do tend to give their comments and I think they have a right during their 5 minutes to make the comments. We are just trying now to do the administrative process.

Mr. Taylor, do you have an administrative—

Mr. TAYLOR. Yes; going back to Mr. Zeliff's list of the equipment that was used, I think for the record, since this is a subject of much debate out amongst the people of this country, for the record, it is very important that there be a delineation of that equipment that was made available on the first day, February 28—

Mr. MCCOLLUM. Let us see what it is and make sure we know. Do we know what it is, Mr. Zeliff, or maybe you know. I think the equipment involved three helicopters that were used that came from the National Guard units. What else?

Mr. ZELIFF. Why do we not read the list and then we will have the experts tell us which ones are for which.

Mr. TAYLOR. Obviously, Mr. Zeliff, let us face it. By the time the second raid had occurred, there were four dead ATF agents and 20 people—

Mr. MCCOLLUM. Whatever the background is, let us clarify it. Mr. Zeliff, I yield just so you read it, just the clarification.

Mr. ZELIFF. Read the list, right?

Mr. MCCOLLUM. Read the list and see if we can get anybody—if anybody on the panel knows, they may not know that.

Mr. ZELIFF. Two UH-1 helicopters, 10 M2A1 Bradleys, 2 main battle tanks—

Mr. MCCOLLUM. Now, the Bradleys and the battle tanks would not have been provided not for this, but for the second raid. The helicopters presumably for this one.

Mr. ZELIFF. Two main battle tanks, Abrams, 2 HMMWV's.

Mr. MCCOLLUM. Presumably that would be for the second one, too. Has anyone here got any information—

Mr. TAYLOR. Mr. Chairman, for clarification, it would be a yes or no question to the panel.

Mr. MCCOLLUM. Let us ask a yes or no.

Mr. TAYLOR. It is not safe to say that on the first day, the only equipment—

Mr. ZELIFF. Why do you not let them answer the question?

Mr. TAYLOR. I am asking a question.

Mr. MCCOLLUM. Ambassador Holmes, can you clarify this?

Ambassador HOLMES. Mr. Chairman, may I make a suggestion. Why don't we submit for the record this equipment.

Mr. MCCOLLUM. That would be a good suggestion and we will accept that very quickly.

Ambassador HOLMES. I saw the problem.

Mr. MCCOLLUM. The last thing on clarification, Major Petree, flash bangs. Are you familiar with flash bangs? Do you know what they are?

Major PETREE. Yes, sir, I am.

Mr. MCCOLLUM. Were flashbangs something which the ATF came to you for in the training and all, did they get involved with you for in the training with that? Was that part of their training, to use flash bangs?

Major PETREE. Yes, sir. What they needed was approval to throw them, to utilize them in their training.

Mr. MCCOLLUM. Am I correct that under the rules and regulations regarding flash bangs normally what you would train them to do would involve caution in the case of use with children and around fire and that sort of thing? Is that correct?

Mrs. THURMAN. Mr. Chairman.

Major PETREE. Sir, the only contact I had with the flashbang issue there at Fort Hood was—

Mr. MCCOLLUM. That is fair enough. I just wanted to know. It had come up earlier and I wanted to clarify it.

Mrs. THURMAN. Mr. Chairman.

Mr. MCCOLLUM. Yes, Mrs. Thurman.

Mrs. THURMAN. Because of just this last round of questions that I kind of think happened here, I would like to ask unanimous consent to give these folks 2 minutes to respond to what I asked in the beginning.

Mr. MCCOLLUM. As far as I am concerned, you can have the unanimous consent. Any objection?

Mr. SHADEGG. I object.

Mrs. THURMAN. Then we will start objecting when we see this kind of nonsense.

Mr. MCCOLLUM. We have finished the rounds of questions. I simply was trying to get things that were loose ends clarified. Chairmen typically do that at the end of one of these hearings. We are at the point now where we have got people wanting to get in and question characterizations and so forth. That was not the purpose of what I was doing. At any rate—

Ms. JACKSON LEE. Mr. Chairman, I am confused. I thought you had agreed to allow the gentlelady's question to be answered.

Mr. MCCOLLUM. There was an objection down here. We have had—

Ms. JACKSON LEE. Would he express his objection, so that we have—

Mr. MCCOLLUM. We had unanimous consent earlier. They objected to this particular one, because this question I gather was one of asking a response to characterizations that two members had made down here. So we are getting into the point where we—I just have to be stricter than I have been, that is all.

Ms. JACKSON LEE. Mr. Chairman, I make a parliamentary inquiry. Can answer be forthcoming from these gentlemen in writing then to the committee in order to receive it?

Mr. MCCOLLUM. The witnesses are free to submit written testimony and that has been already put in the record. We have agreed to accept it and they have done so, I think.

Ms. JACKSON LEE. Mr. Chairman, I need a clarification. In the midst of my questioning, I referred to the—I want to get the correct name—the Department of the Treasury on the Bureau of Alcohol, Tobacco and Firearms, the investigation. I would like unanimous consent to put in pages 211 to 214. It is only four pages and it has to do with the National Guard support and military contact, and it refers to—

Mr. MCCOLLUM. There will be no objection, but I would say that that entire report is already part of this record, as far as we are concerned. The reports of both Treasury and the Justice Department are received as a part of our record for reference.

Ms. JACKSON LEE. Mr. Chairman, if I could make special emphasis to pages 211 to 214.

Mr. CHABOT. Mr. Chairman.

Mr. MCCOLLUM. Mr. Chabot.

Mr. CHABOT. Just by way of clarification, I was difficult to understand whether you said Chabot or Shadegg when you talked about documents being admitted before. I think mine were already previously admitted.

Mr. MCCOLLUM. I had said Shadegg before, that is correct. When I did what I did just a moment ago, I was acknowledging I think Mr. Shadegg and Mr. Buyer had documents they had referred to. They asked for unanimous consent they be admitted. We did that. Individual documents have not been, but my recollection is if it is not true, I will do it myself right now. Without objection, the reports on the Waco raids of the Treasury Department and the Justice Department in their totality will be admitted as a part of this record. I have not heard an objection.

Mr. CHABOT. As well as the documents that we had referred to?

Mr. MCCOLLUM. Those have been admitted. The documents that each of you have submitted, we have gotten unanimous consent on that.

Mr. CONYERS. Mr. Chairman.

Mr. MCCOLLUM. Mr. Conyers.

Mr. CONYERS. May I be granted 5 minutes under—

Mr. MCCOLLUM. You asked in seeking 5 minutes. Now, Ambassador Holmes has to make a plane. He is sitting there ready to run out.

Mr. CONYERS. I do not want him to miss his plane.

Mr. MCCOLLUM. You can ask the rest of the panel. Do you need to ask him?

Mr. CONYERS. We would be delighted, Ambassador, that you make your plane, and I would be very privileged if I would get 5 minutes.

Mr. MCCOLLUM. Well, I am going to yield you the 5 minutes, but then you have to make a decision on Ambassador Holmes' plane.

Mr. CONYERS. I understand that I am going to yield to the gentlelady from Florida, so if she does not mind him leaving, I would be perfectly delighted if he were excused.

Thank you, Mr. Chairman.

Mr. MCCOLLUM. You are welcome.

Ambassador HOLMES. May I make a point? With respect to the statements that were made and you were asking about, we do not consider that a question. We have no comment to make. That is a statement, and so—

Mrs. THURMAN. But it characterized what they thought that they heard today and what was happening, and all I am questioning is do you agree with that or do you not.

Ambassador HOLMES. We have no comment on it. We do not receive it as a question.

Mr. MCCOLLUM. Anything else?

Mrs. THURMAN. I yield my time to the gentleman—

Mr. CONYERS. I will yield to Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Conyers.

Mr. Ambassador, go catch your plane, because this can be directed to the military guys. I am serious. If you have to catch your plane, I do not want to be the one to hold you up.

What I want is a clarification on the day of the first raid, because Mr. Zeliff ran off a very long list of heavy military equipment. Is it not accurate that on the first day, the only assets made available were Texas National Guard helicopters, that the Bradleys, that the tanks, all the heavy things that he refers to were used only after four ATF agents had been murdered, 20 more had been wounded, when the ATF guys were out-gunned by the Branch Davidians? Is that not an accurate statement? If it is not an accurate statement, please tell me.

Ambassador HOLMES. No, that is essentially accurate, and I think it will be clarified definitively when we submit for the record, as I suggested we would do, the full list of equipment.

Mr. TAYLOR. Mr. Ambassador, the American people will not get the chance to read that record. This can be public, but they will not read it.

Ambassador HOLMES. I said that is essentially accurate.

Mr. TAYLOR. Thank you, sir.

I yield to Mr. Schumer.

Mr. SCHUMER. Thank you.

I would just like to first thank all of the gentlemen here for testifying. I would also like to say we have heard some summaries that were made at the end by our colleagues that I do not think matched anything that you said in terms of the methamphetamines, in terms of the military use or anything else. I would simply urge anyone who is interested in this in some detail to look at what the witnesses said, and not at what the summaries which did not give any of the witnesses a chance to tell their veracity.

We all have our views here. My views are known, and I think everyone's views are known. But at the end of the long testimony, to have a few people summarize and the summaries do not fit what the witnesses say, I think the public should be aware of that. We did not hear from any of the witnesses on the summaries were made by two of my colleagues at the end.

I yield back my time to the gentleman from Michigan.

Mr. CONYERS. Are there any of my colleagues that would like time?

Mr. Chairman, I would yield back whatever time I have remaining.

Mr. MCCOLLUM. Thank you very much.

Mr. Ehrlich has come in. Mr. Ehrlich, would you like to be recognized?

Mr. EHRLICH. Yes, Mr. Chairman. I appreciate that, and I will yield my 5 minutes to the chairman.

Mr. MCCOLLUM. Thank you, Mr. Ehrlich. I will not take it. Ambassador Holmes, I am going to let you go. You will catch the plane. I have a couple of comments I want to make on the time, and I would like to ask Major Petree one or two questions, but they do not require your presence, if you need to go.

Major Petree, I just wanted to follow up, because I was seeking clarification and some of my colleagues over here thought that I was broaching the subject of flashbangs inappropriately, I suppose. I did not mean to do that. But as long as I have got the time from Mr. Ehrlich, I want to make sure we did not leave that just hanging out there in the air.

Tell us what a flashbang is.

Major PETREE. This will not be out of a technical bulletin, this answer, but—

Mr. MCCOLLUM. I understand. I do not want to—

Major PETREE. A flashbang essentially is a nondestructive device or a device that has very limited destruction to its environment, normally initiated by a cold fuse system. It does have the capability of a spoon with a cookoff. It explodes. Essentially, a flashbang is exactly what the name implies. It creates a very brilliant flash, it creates a very large noise. This noise and the flashbolt will disorient the eardrum.

Mr. CRAIN. Mr. Chairman, I might be able to help on that.

Mr. MCCOLLUM. Yes, Mr. Crain, please do.

Mr. CRAIN. A flash bang is simply nothing more than a diversionary device used in a context like CQB that we have talked about earlier, where a forced entry scenario requires the assault force to obtain the better hand, if you will, when they go through a door or if they enter a facility. A diversionary device basically gets the attention of those people inside the room, whether they be hostages or friendly or whether they be bad guys.

Mr. MCCOLLUM. Are there times, Mr. Crain or Major Petree, where you have cautions or red flags about using those where they could be hazardous if you have rules of engagement? I think we are going to have testimony, and we have already had some, that ATF had some of those rules. I am not asking you to tell me what their rules are. I am curious to know if you in your training advise law enforcement agencies of this, or if you would advise your own military personnel there are times to be careful, particularly with the use of such devices as flash bangs?

Major PETREE. With regard to advising military, yes. With regard to advising LEA's, I think the circumstances—

Mr. MCCOLLUM. What do you tell the military?

Major PETREE. Certainly, if you are going to be around flammable material, either flammable or volatile material and you had knowledge of that material generally within a certain area, you would certainly want to be careful before you tossed it in there.

Mr. MCCOLLUM. Do you say anything about being careful if there are children in the area if you are using this, say, in the urban warfare environment that you described earlier in answering someone's question? Is there a hazard particularly that you know of for using these flash bangs more around kids than it is around adults?

Major PETREE. I am not medically really capable to explain that.

Mr. MCCOLLUM. I just want to know if you had any of that. That is all I ask.

Now, we have clarified it and I am going on to make a closing comment. I would like to make it. I want to thank all of you for coming today. People have been talking about characterizations. We got lot of that here. I think it is very clear that all of you on this panel today came forward—Ambassador Holmes has just left—every one of you have given us very straight testimony. Some of it has clarified clearly the role of the military.

There is a lot of confusion around what posse comitatus allows and does not allow. It is, as you have testified, for quite some time today, a rule of law that has some parameters and restrictions on where the military can be involved.

Apparently under the rules of engagement as you understood it and I think as you have explained it today, you could give the assistance that you gave to the ATF prior to the time that they made the February 28 raid, and the equipment at least used in that raid. We have not gotten to the questions really surrounding the second event, and that is not why you are here today.

With respect to the issues that are raised about the drug question, I think it is also equally clear that from your perspective the drug issue was explored adequately and you had, from JTF-6, permission to go ahead and make the training.

I think there is some question, though, very serious question, that is not your responsibility to answer to get the answer from ATF about their providing potentially misleading material to those who did make that decision and screen it for you about the involvement of drugs. Whether that would have made any difference for any other unit, it certainly is clear from your testimony, General Pickler, it did make a difference technically for you.

So that is the way I see it. I want to thank all of you for coming today. The time that has been yielded to me has expired. We need to move on to another panel. We thank you very much for spending your time.

Thank you.

Mr. MICA. Mr. Chairman, I have a unanimous-consent request. When I questioned Commander Pickler about the chain of command, I did not have this information relating to approval to execute counterdrug mission, and I have some information to that effect that I would ask be made a part of the record.

Mr. MCCOLLUM. This is a document from the Treasury or that has been provided to the committee, as I see it.

Mr. MICA. Yes.

Mr. MCCOLLUM. That will be accepted, without objection.



At this time, I want to call on our last panel for the day. As I announced earlier, this is the third panel. The fourth panel will be put off until tomorrow, but our third panel is a very important panel concerning the question of the plan for the raid on the 28th of February 1993.

The first witness that we have today on this panel—there are four and I would like them to come and take their places—Phillip Chojnacki, formerly the Special Agent in Charge of the ATF's Houston office; Chuck Sarabyn, who was with us yesterday, as was the previous witness, was the Assistant Special Agent in Charge of the ATF's Houston office; William Buford, was the Resident Agent in Charge of the ATF's Little Rock office; and Lewis Merletti, was Deputy Director of the Treasury Department Review Team that investigated the Waco matter.

This is a compact panel compared to what we have just had. If you gentlemen could find your seats, if all of you are here. When you have found them and we have got all of you in, then I will swear the witnesses to this panel.

I think all four of you are here. If you would stand and raise your right hand, please. Mr. Buford is not here? Let us wait until he comes up. We will wait a couple of moments until he gets here.

There sometimes are pauses in these, and I suppose that is the best way to put it, and I apologize for that time.

[Pause.]

Mr. MCCOLLUM. Thank you for coming. I would like now to ask all four of you to stand and be sworn in. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth? Would you answer.

Mr. CHOJNACKI. I do.

Mr. SARABYN. I do.

Mr. BUFORD. I do.

Mr. MERLETTI. I do.

Mr. MCCOLLUM. Please be seated. Let the record reflect that each of the witnesses answered that in the affirmative.

This part of the hearing is commenced and at the beginning of it the chairman usually yields to himself. I am going to take my 5 minutes and yield to Mr. Blute.

Mr. Blute, you have the 5 minutes.

Mr. BLUTE. Thank you very much, Mr. Chairman.

I want to thank the witnesses for being here this evening. I would like to direct my questioning first here to Mr. Sarabyn, Mr. Chojnacki, and Mr. Buford.

According to the Clinton administration review of the raid, you three had a major role in the planning of the raid, is that correct?

#### **STATEMENTS OF PHILLIP CHOJNACKI, FORMER SPECIAL AGENT IN CHARGE, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, HOUSTON, TX**

Mr. CHOJNACKI. Yes, sir. I was the special agent in charge of the Houston Field Division at that time. According to the programs and orders that we use in ATF, I was designated the incident commander, and in the Houston Division itself I was the highest ranking ATF person, so the overall supervisor of the investigation.

Mr. SARABYN. I was the tactical coordinator for the operation and I was the Assistant Special Agent in Charge under Mr. Chojnacki.

Mr. BUFORD. I was the coteam leader of the New Orleans special response team.

Mr. BLUTE. According to that Clinton administration review, you first met to discuss the raid or the seige on December 4, 1992, is that correct?

Mr. BUFORD. I was not present for that meeting, sir.

Mr. SARABYN. I do not believe I was present at the first meeting, either.

Mr. CHOJNACKI. I have to presume that is correct, sir. I do not know the exact date.

Mr. BLUTE. Just wanted to establish that. You all participated in a number of other meetings through February 28 in which the raid was planned. During this time, we have heard testimony that you spoke with the Department of Defense and the Texas National Guard requesting military assistance.

Mr. CHOJNACKI. That is correct, sir.

Mr. BLUTE. And on January 11, 1993, you established a surveillance operation at the compound?

Mr. CHOJNACKI. That is true.

Mr. BLUTE. And then on February 9, you requested official authorization for the raid from ATF officials?

Mr. SARABYN. What date?

Mr. BLUTE. February 9.

Mr. SARABYN. I think it was February 11 and 12 we went to Washington.

Mr. BLUTE. But within that period of time.

Mr. SARABYN. Yes, sir.

Mr. BLUTE. My question is, after about approximately 2 months of planning and involvement of the Department of Defense, the Texas National Guard, and other people higher up in the Treasury Department, why did you not have a written plan on this raid?

Mr. SARABYN. Sir, at the time we were still basically planning it. We were using three SRT teams, which Mr. Buford was the leader of one of those teams. Each team at that time was developing an individual plan, and our plan was to then go to Fort Hood for 3 or 4 days before the execution of the raid. At that time, we would get up-to-date photographs, we would have briefings by the undercover agents, the updated surveillance, and at that time we would fine-tune our plan.

Mr. BUFORD. I was going to say I did have a written raid plan for my special response team and also a written raid plan for the outside cover teams.

Mr. BLUTE. But there was no overall written plan until just a few days before the raid, is that correct?

**STATEMENT OF CHUCK SARABYN, FORMER ASSISTANT SPECIAL AGENT IN CHARGE, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, HOUSTON, TX**

Mr. SARABYN. There never was a written raid plan for combining all the teams together. They had individual plans, but there was not a plan that was completely combining all those together.

Mr. BLUTE. Let me ask you about a document that I have in front of me which is called the national response plan. Did you, Mr. Sarabyn, have some involvement in writing that plan?

Mr. SARABYN. Well, I had some input into the people that wrote it. Let me explain that this is an administration plan, not a tactical plan.

Mr. BLUTE. When was that plan issued by the ATF?

Mr. SARABYN. When we were actually considering this operation, it was still a draft. When we went to Waco, in our mind it was still a draft. Apparently, it was signed off on—

Mr. BLUTE. I am sorry, I am talking about the national response plan that the ATF established which defined the objectives, policies, and deployment procedures for activations and response to incidents of major proportion. When did that plan become active within the ATF?

Mr. SARABYN. It was actually sent to the field in March.

Mr. BLUTE. Prior to the Waco raid?

Mr. SARABYN. After the Waco raid.

Mr. BLUTE. After the Waco raid. So was this a response to the Waco raid?

Mr. SARABYN. This plan was in the process of being written up. In fact, I participated in it several months before writing up like a draft plan. The investigation occurred. At that time, this was a kind of a draft to see how this was going to work, and after that it would be evaluated and see what changes needed to be done. That was not the written raid plan.

Mr. BLUTE. My point is that there seemingly was a tremendous amount of activity with regard to planning this raid, including ATF agents receiving special forces training as we heard from the previous military panel, the National Guard overflights and intelligence operation, and authorization from high-level Treasury officials, all of this without a written plan. Do you think that is as good a situation?

Mr. SARABYN. Sir, there were individual written raid plans. When we did this, it was going to be like six individual teams. Originally, we were going to execute the plan on March 1. Because of the newspaper, it was moved up 1 day. Originally, that is when that plan was going to be put in its final form. In other words, we had trained, everybody had walked through it. That day, the team leaders would have gotten together and written up one raid plan, after it was all practiced and everybody knew what they would do at that time.

Mr. MCCOLLUM. Mr. Blute, your 5 minutes is up.

Mr. BLUTE. Thank you, Mr. Chairman. I will get back to that.

Mr. MCCOLLUM. You are welcome.

Mr. Schumer you are recognized for 5 minutes. I will fudge the 30 seconds or so for you, too.

Mr. SCHUMER. Thank you.

I want to thank all of you for your bravery, especially the three who were on the raid.

Mr. Buford, I want to talk to you, because there has been a lot of talk about who fired first, and you would be in the best position I suppose of anyone surviving to know. You were riding in the sec-

ond cattle trailer on February 28. What was your assignment that day?

**STATEMENT OF WILLIAM BUFORD, RESIDENT AGENT IN CHARGE, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, LITTLE ROCK, AR**

Mr. BUFORD. I was to take a three-man team to the east side of the building, put a ladder up on the roof, climb the ladder and make entry into the arms room and secure it.

Mr. SCHUMER. Right, and you are the only survivor of your team, as I understand it?

Mr. BUFORD. No, sir, I was the team leader of a 12-man team. On my team, three of my agents were killed, three others were wounded, and I was wounded myself.

Mr. SCHUMER. Right, and the bracelets you wear on your wrist are in memory of those men, the brave men who were lost?

Mr. BUFORD. That is correct.

Mr. SCHUMER. Thank you.

Now, when you got off the trailer, what did you see and hear?

Mr. BUFORD. Prior to my getting off the trailer, just as I was exiting the trailer, gunfire erupted at the front of the building. It sounded to me as though it was coming from all the way across the front of the building. The first rounds I remember hearing fired sounded to me like a 50mm weapon or an M-60 machinegun.

Mr. SCHUMER. Now, we know from what was found there that both those type of weapons were found in the compound later, is that correct?

Mr. BUFORD. I do not believe we found an M-60 totally intact, but they did find the barrel to it and other parts of it.

Mr. SCHUMER. And we also heard testimony that parts of it were sold yesterday. Now, you would recognize the sound of machinegun fire, if you heard it, is that right?

Mr. BUFORD. Yes, sir.

Mr. SCHUMER. You served in Vietnam and heard plenty of it?

Mr. BUFORD. Yes, sir, I was with the 5th Special Forces in Vietnam.

Mr. SCHUMER. Did any of the men from ATF on the mission have a machinegun that would have sounded at all like the sound of the initial machinegun fire that you heard?

Mr. BUFORD. No, sir, none.

Mr. SCHUMER. Do you have any doubt in your mind that the shots that were fired were fired by machinegun and not by ATF agents?

Mr. BUFORD. No doubt.

Mr. SCHUMER. Do you have any doubt in your mind that the people you were going to serve a warrant on fired first?

Mr. BUFORD. There is no doubt in my mind.

Mr. SCHUMER. None whatsoever?

Mr. BUFORD. None whatsoever.

Mr. SCHUMER. And you were the team leader and you were one of the people who went up the ladder, we all see that on the clips of what happened.

Mr. BUFORD. Yes, sir.

Mr. SCHUMER. I would like to ask any of the other gentlemen on the panel, Mr. Sarabyn and Mr. Chojnacki, both of whom have been through plenty, do you have any reason to doubt team leader Buford's account?

Mr. SARABYN. None whatsoever, sir. I was on the first truck coming in and we went down further, and soon as I opened my door, there were shots coming out of the building.

Mr. SCHUMER. It was perfectly clear to you, as well, Mr. Sarabyn, that it was the first shots fired when you went to serve the warrant and make the search were from the compound, not from ATF agents?

Mr. SARABYN. Yes, sir, as soon as I opened the door.

Mr. SCHUMER. No doubts whatsoever in your mind?

Mr. SARABYN. No, sir.

Mr. SCHUMER. Mr. Chojnacki, do you agree with that?

Mr. CHOJNACKI. Yes, sir. I was in the command and control helicopter approximately 350 to 500 yards behind the compound. I could see ATF agents departing the vehicle. Then our helicopter started taking fire and at least three rounds hit the helicopter. The damage was sufficient for the red lights on the console to go off. The pilot commented that we had red lights, we had a problem and he had to bring the thing down. I do not know anything more after that.

Mr. SCHUMER. Thank you, Mr. Chojnacki.

Mr. Buford, just tell me, as somebody who is team leader who saw three men die, someone who wears every day the bracelets of those three, how do you feel when you read all these stories and hear everything else about these theories that you the ATF simply attempting to serve a peacefully, although using the usual pattern of dynamic entry, a warrant on this compound, how do you feel when people hypothesize that you or your men shot first?

Mr. BUFORD. It is very difficult, sir, to deal with this on a personal level and also on a professional level. The men that I served with there were fine young men. They had families. I think many people have forgotten that not only were there Davidians in there with their families, but we have wives and children without husbands and fathers. In fact, it is very similar to the way I felt when I first came back from Vietnam. I felt like I had done a service to my country and was being criticized for it.

Mr. SCHUMER. I thank you. I want to say to all of you that I for one, and I think most Americans—there may be a few on the fringes who are trying to use this for other purposes, but most Americans have tremendous sympathy for what you went through. I very much appreciate your clear concise testimony that, if I may summarize without taking any liberties, that the shots came from the compound first, uncontroverted at least according to the three gentlemen who are on the scene.

Mr. MCCOLLUM. Thank you, Mr. Schumer.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. Chojnacki, did I understand that you were in charge of this overall raid?

Mr. CHOJNACKI. Yes, sir, that is true.

Mr. SCHIFF. Then I would like to ask you first, sir, who told the Army that the purpose of this raid was to take down a methamphetamine lab?

Mr. CHOJNACKI. I do not know that I can really answer that question, sir. The only contact that I had directly with anybody representing the military regarding those terms was a conversation with an individual by the name of Bill Enneg who represented the Texas National Guard.

Mr. SCHIFF. You were in charge of this operation, so let me ask you who was in charge of contacting the military?

Mr. CHOJNACKI. One of my supervisory agents was assigned the task of coordinating that kind of effort and he would have made that contact in my name, sir.

Mr. SCHIFF. So the person who contacted the military worked for you?

Mr. CHOJNACKI. Yes, sir.

Mr. SCHIFF. Do you have any idea where the military got the idea, as they have testified to in an uncontroverted fashion, that they thought this was a raid to take down a methamphetamine lab? Do you have any idea where they got that idea?

Mr. CHOJNACKI. No, sir, I do not. I heard that testimony. To the best of my knowledge, we had found the remnants or we were aware that there should have been or may have been remnants of a methamphetamine processing lab that had been left behind in 1987. We were aware that it was supposed to have been turned over by David Koresh to the sheriff's department, the case agent of the department.

Mr. SCHIFF. Was this raid ever to take down a methamphetamine lab?

Mr. CHOJNACKI. The raid as far as I am concerned was for firearms violations.

Mr. SCHIFF. Thank you. Who made the decision not to try to arrest David Koresh outside of the compound?

Mr. CHOJNACKI. I would have to say that it was a joint decision based on the impression of all the planners that it would not have been a good idea. First, we did not even have a signed arrest warrant until the 25th of February, not sometime prior to that.

At that particular time, we were under the impression from the briefings we had had from the undercover agents and the people that were monitoring their activities that David had said he was not coming off the compound, he was concerned about the attitude of some of his people and did not want to leave the premises, and we felt that if we stayed and waited for him to come off, we could spend several days waiting for an event that was not going to take place.

Mr. SCHIFF. Witnesses had seen him come out of the compound at various times, and you did know that?

Mr. CHOJNACKI. Yes, sir, I do know that.

Mr. SCHIFF. Who made the decision not to consider taking up David Koresh's offer to let someone from ATF come into the compound and look at his firearms?

Mr. CHOJNACKI. To the best of my knowledge, that would have been a decision made by the case agent, Mr. Aguilera.

Mr. SCHIFF. Did Mr. Aguilera ever tell you, as the agent in charge of the overall operation, that that offer had been made?

Mr. CHOJNACKI. Either Mr. Aguilera told me during the course of one of our briefings or I read it in one of his reports, but I was aware of something along those lines, sir, yes.

Mr. SARABYN. Can I answer, sir?

Mr. SCHIFF. Mr. Sarabyn.

Mr. SARABYN. We discussed in the tactical planning group the option about having him go back and we discussed it and there were several reasons that we did not try to do that. One was when the Health and Human Services that had helped us out a couple of times went out there, she was very restricted on where she could go. They would just take her into one room or whatever. She did not have access to all the rooms. So we were concerned that if he went back in, that we would not get access, we would not really see anything in there as far as illegal guns. Obviously, he is not going to say here is my machineguns and explosives.

Mr. SCHIFF. You were planning a dynamic entry raid at that point, is that right?

Mr. SARABYN. Yes.

Mr. SCHIFF. Would it not have been helpful, even if Mr. Koresh would not have shown you illegal weapons voluntarily, to have gotten the further view of the inside of the compound so you knew better what you were dealing with?

Mr. SARABYN. Yes, sir, but we had information at one time from all our original reports that he had 24-hour guards outside, and apparently the information we were getting from current family members that were still in there that he was getting paranoid. The last time they had done a major news story, there was an Australian news story, and after that he got kind of scared that the Government or whatever was going to do something and put armed guards out again. So we thought if we sent him back in and he knew that ATF was investigating, he would put the armed guards out and it would be harder for us to be able to execute any type of warrant.

Mr. SCHIFF. I want to say I think he already knew ATF was investigating based upon the telephone conversations.

Mr. SARABYN. The investigation was just a question of where were the guns, and he said they were here.

Mr. SCHIFF. Mr. Chojnacki, could you clarify perhaps once and for all, as the agent in charge. Was the element of surprise ever a key element, a critical element in the plan of this raid?

Mr. CHOJNACKI. Sir, surprise and speed are always key elements in a raid of this nature. The primary element in the raid as far as we were concerned was safety, the safety of my agents, the safety of the innocents inside that compound, and even the safety of the potential defendants.

Mr. SCHIFF. And if the element of surprise were known to be lost, would that not suggest not going ahead with the dynamic entry raid?

Mr. CHOJNACKI. In this situation, it certainly would, sir.

Mr. SCHIFF. But the raid went ahead anyway.

Mr. CHOJNACKI. I have never been spoken to by anybody regarding the element of surprise or my knowledge of that fact, sir. I was

not aware that we had lost the element of surprise when I made that decision to go forward.

Mr. SCHIFF. Thank you.

I yield back, Mr. Chairman.

Mr. MCCOLLUM. Thank you very much, Mr. Schiff.

Mr. CONYERS.

Mr. CONYERS. Thank you very much, Mr. Chairman.

Mr. Merletti, you have seen the Treasury report put out on this of 300 pages?

**STATEMENT OF LEWIS C. MERLETTI, ASSISTANT PROJECT DIRECTOR, DEPARTMENT OF THE TREASURY WACO ADMINISTRATIVE REVIEW TEAM**

Mr. MERLETTI. Yes, sir.

Mr. CONYERS. Is your mike on?

Mr. MERLETTI. Yes, sir.

Mr. CONYERS. Just speak up a little louder, pull the mike closer.

Is there essential agreement that the Treasury report that this committee has on this subject matter and on Koresh is essential correct?

Mr. MERLETTI. Absolutely, sir. I would like to say that I take strong issue with the accusations that were made by another witness yesterday making the accusations that this report was unfair, biased and a coverup. I stand behind the solid integrity of this report. I speak for myself and for the remainder of the review group.

I was the Deputy Assistant Director for the Secret Service's Inspection Division, which would be the equivalent of an internal affairs unit in April 1993. I was selected to head up this investigation. I was not a volunteer and I did not have any agenda. I went to the Treasury Department and met Mr. Noble and Mr. Molton, who was the Project Director. I was told I was to find the truth. I interviewed candidates—

Mr. CONYERS. This is after the siege?

Mr. MERLETTI. This is after the fire, yes, sir, a few days after the fire when we were going to begin our investigation. I interviewed candidates for investigators. I interviewed people from the Customs Services, IRS, and the Secret Service. These are our other Treasury agencies.

Mr. CONYERS. What have you heard that you took exception to with one of the witnesses?

Mr. MERLETTI. Yesterday, one of the witnesses said that this report was unfair, biased and a coverup.

Mr. CONYERS. And who was that?

Mr. MERLETTI. That was Mr. Hartnett.

Mr. CONYERS. And what is your position that you can vouch from your point of view and experience with this that it was accurate, in fact?

Mr. MERLETTI. It is absolutely accurate, sir.

Mr. CONYERS. Do any of you have any exceptions to this report or any comments about it that you would like to put in the record at this time? Mr. Chojnacki, Mr. Sarabyn.

Mr. SARABYN. I do not feel that it is completely accurate.

Mr. CONYERS. In which respects, sir?



Mr. SARABYN. This is my personal opinion. I feel that 60 or 70 percent of it is very accurate, it has some legitimate criticisms, it has some legitimate things. I think there is 10 or 15 percent that has a twist or turn where three or four people may have been interviewed and one elected to go with the story, and then I think part of it is inaccurate.

I think there is some very serious allegations against me in the book. I feel if they were true, I should have been fired. If they were true, I would have resigned, but I do not feel that they are true and accurate.

Mr. CONYERS. Let me ask you, Mr. Merletti, even though the raid plan was flawed, it was not recklessly put together, is that correct?

Mr. MERLETTI. I would not characterize it as reckless.

Mr. CONYERS. And the fact that it did not work does not mean that it was not planned as well as it could be under the circumstances?

Mr. MERLETTI. That is correct. I feel the planners actually did a good job. However, they were not receiving good intelligence. The intelligence operation that was set up was very poorly set up, and they did not feed the correct information to the planners themselves.

Mr. CONYERS. And that has been generally conceded. Is it true also that the element of surprise being blown made it more difficult to execute the strategy that had been agreed to?

Mr. MERLETTI. Absolutely. The dynamic entry is hinged on the element of surprise. You cannot have one without the other. The element of surprise was lost.

Mr. CONYERS. So the result that was feared by most people that there would be a suicide activity was actualized?

Mr. MERLETTI. Yes, sir.

Mr. CONYERS. Mr. Buford, could I get your comments on this matter, sir?

Mr. BUFORD. Yes, sir. When we were planning the raid, we first looked immediately at a situation that would cause us to put a perimeter around the compound, to arrest Mr. Howell off the compound. In fact, we went to great lengths exploring different ways we might be able to arrest him off the compound.

Mr. CONYERS. But with the guns on the compound, with that object of the warrant, it did not make sense to arrest him off and what you are trying to seize is not there.

Mr. MCCOLLUM. Mr. Buford is going to be able to answer, Mr. Conyers, but your time had expired even before that question.

Please go ahead, Mr. Buford.

Mr. BUFORD. That plan we felt later that it would not be possible to do that, sir. We began with what we called a seige-type operation, putting a perimeter up around the compound and calling in and asking Mr. Koresh to allow us to come in and execute the warrant.

However, the tactical intelligence that we gained between the first meeting in December and the later meeting in January changed our minds and there were a number of reasons that we decided to go with a different type entry, a dynamic-type entry. First and foremost among those was that I had interviewed numer-

ous people and each of those individuals related to me that if we went to a seige-type operation, there would be a mass suicide on the inside after a long period of time, and, as we all know, that is in fact what happened.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you very much, Mr. Conyers.

Ms. Ros-Lehtinen, you are recognized for 5 minutes.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. I would like to yield my time to Mr. Blute.

Mr. BLUTE. Thank you. I would like to thank my colleague for yielding her time.

I would like to follow up on some of the interesting issues that Mr. Conyers raised and some of the statements that have been made by the table, because I think it is very important. There seems to be a split as to the accuracy of this report, particularly among those who were most closely involved, and I think that is an important difference that we should examine here.

Mr. Sarabyn, I wonder if you could tell me who Larry Sparks is.

Mr. SARABYN. Larry Sparks is a supervisor, used to be an ATF supervisor in Austin. He was subsequently fired for sexual harassment. He had worked for me.

Mr. BLUTE. Are you aware of a recorded telephone conversation between yourself and Mr. Sparks?

Mr. SARABYN. No, I am not, sir.

Mr. BLUTE. Recorded on July 6, 1993. This is a document that we received from the Justice Department and it is a conversation between you and Mr. Sparks apparently talking about your particular problems in the fallout from the Waco incident. I would just like to quote you from this transcript, if I could.

You say, "Well, they got this, you know, they are chasing wind-mills. They think that there is this big conspiracy thing or whatever, and now obviously some people way up said some things after that that were not true." Do you recall making that statement in that conversation?

Mr. SARABYN. Not right off the top of my head.

Mr. BLUTE. Does it stimulate any type of—

Mr. SARABYN. Obviously, during the interviews as far as this, there was a feeling being interviewed that there was some conspiracy by ATF to cover something up possibly, because there were some things said in the press after that were inaccurate.

Mr. BLUTE. So you believe that some ATF higherups said some things that were not true about what happened on the ground, what happened in the planning of the raid and the conduct of the raid?

Mr. SARABYN. I do not know if they were not true or spoken incorrectly or whatever.

Mr. BLUTE. Let me mention another statement you said in this conversation: "No, I mean, you know, they wanted—you know, we got to this point where I said, you know, this supposed truth you are trying to get to, I would have to lie to get beyond truth or whatever. You know, I was not sure exactly what they were." I want to know what you were referring to in that conversation.

Mr. SARABYN. When I was being interviewed by the Treasury review team trying to go through and explain some things, they said

this is where this is, everything will be all right, you know, this is the way things kind of went down, and I made that statement that, you know, for me to tell you the truth, I would have to be telling a lie.

Mr. BLUTE. Later in the conversation, Mr. Sparks, referring to his particular situation, I assume, with regard to the sexual harassment problems, says, "I'm dead. I'm dead, you now I'm dead, but I am not going out without a fight. I mean look at Austin now, how they are turning on you." Did you sense that the Austin ATF office was turning on you at that time?

Mr. SARABYN. During the interviews or whatever that Treasury did with me, there were several times that the Austin agents had said things that I did not think were true.

Mr. BLUTE. Later on, Sparks says, "Obviously, they are making lies against you." Did you feel that the Austin office was making lies against you at that time?

Mr. SARABYN. Some of the things that the Treasury reviewers asked me, yes.

Mr. BLUTE. I think it is pretty clear. I would like to ask Mr. Merletti to respond first of all to Mr. Harnett's strong statement last night that he felt that this report was flawed, and indeed even covered up some of the more damaging statements made by higherups. Second, I wonder if you would respond to some of the concerns that Mr. Sarabyn made in this conversation which was an extemporaneous conversation between himself and another agent.

Mr. MERLETTI. Let me say again I stand by the solid integrity of this report. As far as Mr. Sarabyn, he is referring to the loss of the element of surprise, and upon his arrival at the staging area, he announced repeatedly we have to hurry up, Koresh knows we are coming.

When I interviewed Chuck Sarabyn, the group had already interviewed approximately 100 people. I had reports from 61 individuals, one of them being Mr. Buford who heard Mr. Sarabyn say hurry up, Koresh knows we are coming. I asked Mr. Sarabyn did you say this, and he said no. I was quoting from Mr. Rodriguez. Once I showed him that we had 61 statements, he said, well, I was trying to say what Robert told me.

Later on in the interview, he admitted that he knew that Koresh knew the ATF were coming. He was asked how certain of that are you, and he said I am 100 percent certain.

Mr. BLUTE. In my last moment here, I wonder if Mr. Chojnacki could comment on what he thinks about this report and its veracity.

Mr. CHOJNACKI. I would have to say that my position is very similar to Mr. Harnett and Mr. Sarabyn's. I try to explain how the perception of the review team that Agent Rodriguez provided us sufficient information could not be questioned by me.

What I tried to provide them was my perception that while he may have thought he gave us the message that he intended to deliver to us at the rate it was compromised, that unless we understood that, we could not act accordingly. In my understanding, I thought I had received the same kind of briefing from Robert Rodriguez through Chuck that I had received on other briefings where he said every time he talks to me, Koresh tells me to be

careful, ATF is going to come for him, ATF is going to come for me, that same kind of rhetoric.

I went through the comments that he had made in my mind and then said to Chuck, what does that all mean, what is different about what we always hear? Chuck said I do not know. I asked Robert the same question and he did not know. Then Chuck went on to point out that he had asked a series of questions that the team leaders had asked him to ask about Robert's last-minute observations inside the compound: What was he wearing? Was he armed? Was anybody armed? Was he giving them any instructions? Those kinds of questions, and all the answers were negative.

I said I do not see any reason to not go forward. Do you, Chuck? Ted Royster, the other SAC that was with me at the time, I said do you men see any reason for us to not go forward at this time? Nobody responded that they saw a problem, so I said then let us go. I knew of no reason to not go. I did not understand or believe that we had been warned that the raid was compromised.

Mr. BLUTE. I thank you for your testimony. I would just finally say, Mr. Chairman, that this testimony I think is very important, because it indicates a tremendous—

Mr. MCCOLLUM. Order in the house. Mr. Blute is going to get another comment in one of these days, but right now his time is up and I recognize that sensitivity over here.

Mrs. Collins, you have the time and I think we have time for your questions before we have to vote. We have not had the second bells. So I yield 5 minutes to you.

Mrs. COLLINS of Illinois. Mr. Chairman, it is almost time for the second bells to ring now, so I wonder if I could come back and ask my questions after the vote.

Mr. MCCOLLUM. If you would prefer to do that. We are apparently going to have more than one vote and, as I indicated on previous recesses, we are at the stage now where we are going to come back within 5 minutes of the last vote. I do not know if this is two votes or three or something like that but we will take a recess until 5 minutes after the final vote of this series.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman.

Mr. MCCOLLUM. The subcommittees are in recess.

[Recess.]

Mr. MCCOLLUM. This hearing of the joint subcommittees on Waco is reconvened.

When we went into recess for votes, we were just about to let Mrs. Collins ask her questions. I yield 5 minutes to you, Mrs. Collins.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman.

Mr. Buford, it was your responsibility to lead some of the ATF agents to the roof of the compound, was it not?

Mr. BUFORD. That is correct, ma'am.

Mrs. COLLINS of Illinois. Can you describe for us what it was like when you and your men first came out of the trailer?

Mr. BUFORD. Yes, ma'am. Initially, prior to exiting the trailer, I heard a tremendous amount of gunfire at the front of the building. It seemed to be all the way across the building, automatic weapons fire, machinegun fire. My team went to the east side of the building, we put our ladders onto the roof. As we were ascending the

roof, we received a lot of fire. I could hear the rounds cracking around my head as we went onto the roof.

Almost immediately upon getting on the roof, Conway LeBleu, one of my agents, was shot through the head and killed immediately. After he was shot, the Davidians continued to shoot into his body, even though it was obvious he was dead. This happened on several occasions.

The window I was going to make entry through, we broke the window out, entered the window and received a withering gunfire on the inside. I encountered one armed individual on the inside. He had backed through a doorway. I went to the doorway and he attempted to enter the room again with an AK-47. I shot and I believe I hit him. He fell. I shot him in the doorway there.

Almost immediately, Special Agent Glen Jordan yelled that he had been hit, and I went back to where Glen was. The amount of fire coming into the room was tremendous. I remember thinking I cannot believe I am not getting hit. I asked Glen how he was. It was obvious he was severely wounded. There was already a large pool of blood under his right arm. I asked him if he could go, that we needed to get out. About that time, I was shot the first time. A round came through the floor, an M-16 round, I believe. It struck me in the left buttocks and traveled up my thigh and lodged next to my thigh about midway in the thigh.

I at that point was knocked back and looked down and observed that this was the arms room as we had thought it was. There were weapons in a gun rack there. There was also a box of hand grenades that I was kneeling beside. And I remember thinking to myself I am glad that those did not go off, because I had to put a distraction device, a flashbang upon going into the room.

I again asked Glen if he thought he could go, and the other agent in the room Keith Constantino said he could give us cover. About that time, I was shot twice, once in the hip and once in the upper thigh with an AK-47, I believe. At that point, I realized that I was severely wounded and we needed to get out of the room. I again helped Agent Jordan get to his feet, and Agent Keith Constantino covered for us as we made our way out the window.

After I got out onto the roof, I was unable to get to my feet. I rolled off of the roof, fell to the ground and broke several ribs when I hit the ground, and that pain led me to believe that I had been shot again. However, I had not. Two of our agents dragged me around to the side where they thought I would be out of the line of fire. They left me there—did not leave me there, but went to get some medical equipment to take care of me.

As I laid there, obviously, no threat to anyone, they began to shoot at me again. The rounds were hitting all around my head. I was unable to move because of the wounds I had already received. I was struck in the face at that time with a round, and Special Agent Ken Chism ran over and jumped on top of me and covered me with his body.

They then took me around to the side of the building where I remained for the remainder of the firefight, which lasted about 2½ hours.

Mrs. COLLINS of Illinois. Various members have expressed disbelief that an ATF agent would refuse a so-called invitation by

David Koresh to view his guns. Mr. Buford, four of your colleagues were killed by overwhelming gunfire at the Koresh compound in an attempt to serve a legally-issued warrant. Is that not a good reason why an ATF agent might not want to take Koresh up on his invitation?

Mr. BUFORD. Well, that is exactly one of the reasons. There was as lot of information, that I was not in a position to make that, but had I been able to make that decision, I would not have allowed one of my agents to go in there. We knew that Koresh could very well be intent on taking a hostage. I was convinced he would never show them any illegal weapons, anyway.

In a similar situation in a religious-type group that I had dealt with in Arkansas calling themselves the Covenant, the Sword, the Arm of the Lord, I attempted to serve a subpoena on Jim Ellison. This was in a rural area. When I arrived at the gate, I was surrounded by a large number of armed men. I told them that I wanted to serve the subpoena on Mr. Ellison. I was disarmed. I was able to finally execute the subpoena on Mr. Ellison, but was very concerned that I would be killed or taken hostage at that point, and I feel like that is a very real possibility, had Agent Aguilera gone in there by himself to examine those weapons.

Mr. MCCOLLUM. Mrs. Collins, your time has expired.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman.

Mr. MCCOLLUM. You are welcome.

Mr. Coble, you are recognized for 5 minutes.

Mr. COBLE. Thank you, Mr. Chairman.

Gentlemen, tempers have a way of running high on this Hill at hearing time, so you all bear with us. You may hear some tempers flare now and again.

This hearing has been called by some as a witch hunt. I think that is unfair. I think the purpose of this hearing is to hopefully restore public confidence in law enforcement, and I think at this point it may well be the low ebb. I do not think there is anybody on this committee who would declare that David Koresh is a good man, nor that you all are bad men. I do not think that is the case at all.

So you all keep in mind that when we are critical of what went down that day, that is not to say that we are bashing ATF or bashing the FBI. It is that we are trying to keep it from happening again.

And I will stipulate, Mr. Chairman, that at this hearing and, for that matter, since the hearing went down, we have the luxury of applying 20/20 hindsight, and that is the luxury at times. I have tried to get these hearings under way for almost 2 years. I requested that these hearings that we are having today, that they be commenced almost 2 years ago, and I was not successful in that attempt.

Let me think aloud for a minute or two, gentlemen. Some of the questions yesterday seemed to be framed in such a way that, oh, to have arrested Koresh or just a mere incidental about it, that is no big deal, what we really wanted to do was get on board the premises. Surely you wanted to get on board the premises, but I think also to have arrested Koresh would have been far more than incidental. I think that would have been significant indeed.

I mean here is a guy who is a charismatic leader of the self-proclaimed prophet Jesus Christ, if you will, that is what he claimed, I am told, get him out of the pocket, remove the nerve center, even though you may have him in custody for just a few moments or a few hours, at least that would free up the compound for a search to commence. That is the part of hindsight that I wish had been done.

Having said that, any of you four gentlemen, was there ever any consideration to extend the time to maintain the operation of the undercover house? I think that was an operation only about a month prior to the raid. I am thinking aloud again. Now, if that could have been extended maybe for 4 or 5 or 6 weeks, perhaps more information could have been assembled concerning Koresh. I will hear from any of you.

Mr. BUFORD. I would respond. Again, I would go back to the situation that I dealt with the Covenant, the Sword, the Arm of the Lord in Arkansas. This was a group similar, that the leader professed an Armageddon, if you will. He had prophesied that this Armageddon would take place at a certain time. When it did not happen, then he had to do something in order to save face with his people to make it happen. In this case, he bombed a natural gas pipeline leading from Houston to Chicago, thinking that by cutting off the flow of natural gas into Chicago, it would cause the riots that he had predicted.

Mr. COBLE. Mr. Buford, my time is short. I am talking about the undercover house.

Mr. BUFORD. My concern about extending that time, sir, was that Mr. Koresh had also preached an Armageddon and we know now that there was a plot to go to the McDonalds and murder the people at the McDonalds and retreat to the compound, and this in my mind was one reason that this needed to be done not recklessly quickly, but it needed to be done as quickly as possible.

Mr. COBLE. I recall having read in the volumes I have read about this, as have my colleagues, that at some point a request was made to the military to drop smoke canisters just prior to the beginning of the raid. Now, I think those smoke canisters were never dropped. Why?

Mr. BUFORD. There was never a request, sir, for smoke canisters to be dropped. In our contingency plan, if we had received fire as we turned into the driveway, we had requested to use smoke to cover our exit from the trailer to go to a blocked house which was a short distance away, and from there we would set up the perimeter. The smoke would have been used if we had been drawing fire to help cover our withdrawal to an area to set up a perimeter.

Mr. MCCOLLUM. Mr. Coble, your time is expired.

Mr. COBLE. The ubiquitous red light illuminates and I will withdraw, Mr. Chairman. I thank you gentlemen.

Mr. MCCOLLUM. Thank you, Mr. Coble.

Mr. Scott, you are recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, have the gentlemen sitting right behind the witnesses been identified?

Mr. MCCOLLUM. I do not believe we have, but I believe they are counsel for the witnesses. We would be glad to identify them, though they are not testifying today.

Would you mind identifying ourselves, gentlemen?

Mr. CARLSON. I am Dave Carlson, counsel for Phil Chojnacki.

Mr. GARDNER. Steve Gardner, representing Mr. Sarabyn.

Mr. TOULE. My name is Joe Toule. I represent Mr. Buford.

Mr. MCCOLLUM. They are counsel, but they are not witnesses.

Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Buford, could you tell me a little bit about what precautions were taken to protect the lives of the officers going in, in terms of clothing or any other precautions that were taken?

Mr. BUFORD. Yes, sir. We wear protective gear, helmets, vests. I have some of the items that were actually used on that day, if you would like me to show you those, some of the equipment that we used. We wear the Kevlar helmet. We never wore a mask. There has been a lot of talk that we wore ninja masks or something. No one ever wore masks, but we did wear a level 3 ballistics vest or a bullet—it is not a bullet-proof vest, because rounds can go through it.

Mr. SCOTT. Were any of the officers shot through the vests?

Mr. BUFORD. Yes, many of the agents' lives were saved as a result of wearing the vests. However, one of our agents, because the high-velocity round that is fired by an assault rifle, there is no vest that will stop that round, and he was shot through the chest three times by an AK-47, even though he was wearing a vest.

Mr. SCOTT. Is that ammunition legally purchased?

Mr. BUFORD. I have no knowledge that it was illegally purchased, sir. This was just a normal round, not an armor-piercing round.

Mr. SCOTT. I yield the balance of my time to the gentlemen from Michigan.

Mr. CONYERS. I thank my friend from Virginia, Mr. Scott.

How can we get to the bottom of whether there was an order given that if the element of surprise was compromised, then this strategy would not proceed?

Mr. CHOJNACKI. May I try to answer that, sir?

Mr. CONYERS. Yes, Mr. Chojnacki.

Mr. CHOJNACKI. In our original briefings at headquarters, we spent 1 day briefing the law enforcement executive staff. The following morning we provided a briefing for the Director of the Bureau, Mr. Higgins. We acknowledge during the course of those briefings that speed and secrecy is a critical element in the kind of enforcement action we were taking.

At all of those conferences and a subsequent conference after the second briefing that I had one-on-one with the Associate Director for Law Enforcement Dan Hartnett, the executive level people stressed to me that safety was the important issue. The term that you just used was never mentioned to me as something that was a critical factor. It was a known critical factor. The element of surprise is critical in that kind of an operation. We talked of safety. We talked of safety for the agents, the safety of the people that were inside the compound, whether they were innocents or defendants.

My instructions at that time were to make use of my undercover people and the forward observers, the people who would have been



in the undercover house and other locations, and if it appeared that the operation could not be exercised safely, we were to terminate and go home.

Mr. CONYERS. Now, when you talk about secrecy, that is the other side of the element of surprise, is it not?

Mr. CHOJNACKI. Yes, sir. The problem we had is that we were ambushed. I did not know at the time I gave the order to go forward that we had been compromised and they would be laying in wait to shoot the people that I was sending forth to execute that warrant.

Mr. CONYERS. Mr. Merletti, does that version comport with what is in the Treasury report?

Mr. MERLETTI. It does not, sir.

Mr. CONYERS. Why not?

Mr. MERLETTI. The element of surprise was lost and the commanders knew the element of surprise was lost. They announced that. I should say Mr. Sarabyn announced that. He had a conversation on the tarmac at the command post with Mr. Chojnacki and Mr. Ted Royster. Initially, Mr. Royster denied even being at that conversation. However, after he was presented with, I believe it was 12 witnesses that immediately after this conversation heard him say they knew we were coming, he then admitted yes, I was there. In fact, Mr. Sarabyn said Koresh knows we are coming, I think we could do it if we do it quickly.

Mr. CONYERS. Thank you.

Mr. Sarabyn, you just heard him.

Mr. SARABYN. Let me start at the beginning of the conversation with Robert. I got a telephone call from Robert Rodriguez, who was the undercover agent. The first thing on the phone, he said to me they know, and obviously I was surprised or whatever. I go, what do you mean they know? And he said I was in there with Bible study with Koresh, he got a telephone call, went in the other room and came back and said I know about ATF and the Guard coming. I said what do you mean he knows about ATF and the Guard coming? And he says I do not know. He says he got the call, he repeated exactly what he said to me.

Now, at this conversation, I took notes. Everybody has to remember that this is probably the most traumatic incident in all of our lives. Mr. Buford was in Vietnam and a few other people, and they said it was worse than when they were in Vietnam. So all of us have remembered things at different times, remembered things later after we have had conversations. I feel my notes are fairly accurate, because they cannot be traumatized, because they were right there. It was not something to be remembered or whatever.

So after he said to me the second time, just repeated what he said, in my mind I am thinking what is going on here. He has said this numerous times before. I think you heard in the testimony of some of the other people how he always talked about ATF coming to get him, the Government coming to get him, and several other things.

We were briefed at our tactical meetings by Dale Littleton that he had told Robert that on videotape of the training. Robert tells us he is always talking about the ATF coming to get him. So I am saying he is saying this again. So I am trying to determine what

is he doing. So I say to Robert, what is he doing? Robert said he is preaching, he is reading the Bible. Normally, after we talk to everybody, all our intelligence from 9 to 10, that is when he reads the Bible.

I said do you see any guns in there? He says no. I said is he telling anybody to do anything? No. So in my mind I have heard something that I have heard over and over and over again. He is not taking any action, he is not telling anybody to do anything. Then I had a list from my commanders that I met with that morning that went over some additional issues. I said, Robert, what is he wearing? Are the dogs out? Did you see any guns? What is his mood? Nervous and shaking. I put does not know about coming, because I concluded that that was just the statement.

So I go out to the deputy commander, which is Phil Chojnacki and Ted Royster, and go over the conversation with what Robert had said. Now, these people have also been on the same briefings as the other people. Phil asked a couple questions and says go ahead. The helicopters are going. They are already going, because I had pulled them off the helicopters to actually talk to them. He said it is a go.

I get on the phone and I call the deputy tactical commander, which is Jim Cavanaugh. Now, he is in the room where Robert just came across. He has four observers that are watching both the front and the back. And I say to Jim, did you talk to Robert? Yes. How does it look? Fine. What are they doing? They have got some people carrying the buckets, which they do every day. They have got a couple guys standing by the car. OK, I am on the way to the staging area, hang up the phone and I will call you when I get to the staging area to walk us into execution of the warrant.

I get to the staging area and in my mind when I got there, you know, I pictured the guys—I did not know what time it was, but it is ready to go. The helicopters are going up and I get into a large area and there are 75 agents all over the parking lot, there is—

Mr. CONYERS. You are saying it was too late to call it off?

Mr. SARABYN. No, I am not saying it is too late to call it off.

Mr. CONYERS. It was not too late to call it off?

Mr. SARABYN. No, we had a plan that we could have called it off until we went right in the driveway, and I will go through that. May I finish?

Mr. CONYERS. You sure can. That is why we are here.

Mr. SARABYN. I pull into the staging area and there are guys all over just standing around talking by the trucks. There were some hoods that were supposed to be on top of the vehicles, and one of those were off. So I am like why are these guys not ready to go. So I do say hurry up, he knows. I say that to a couple people outside. I go inside and then I go over the conversation which I had with Robert. Robert got a call, you know, said he knows about ATF and the Guard, you know, shaking, reading the Bible, no one is doing anything, no guns are out.

So I think Bill and Pete asked me a couple of questions. We say let us go. So we load in the trucks. I call Cavanaugh again, how are things at the place? Everything is fine, normal. We drive in and we get about half-way there and Cavanaugh—any of these commanders I talked about could have called it off any time, myself,

Ted, Phil, Cavanaugh, Pete. They do not have to be in the cars or whatever, just say something is wrong or whatever. We went through all this and not one of these persons said something is wrong. We had heard this over and over again, coming to get you or whatever. So the words did not mean what they should have meant.

So as we drove up to the driveway, was the last point Cavanaugh could call it off. I said how does it look? He said fine. I pulled in the driveway. Now, I had the authority driving down the driveway until we turned where I could have aborted the mission. If I saw anything abnormal, guns or whatever, I would just say abort. We had a plan which Phil had described. That did not happen. We turned the corner and we were ambushed.

Mr. CONYERS. Does that comport with your experience, Mr. Buford, that particular point in time?

Mr. BUFORD. I can only speak when Mr. Sarabyn arrived at the staging area, and that is basically the way I understood it, yes, sir.

Mr. CONYERS. The same with you, Mr. Chojnacki?

Mr. CHOJNACKI. Yes, sir. As far as the conversation on the tarmac, that is the way I recall the situation. I explained it in a previous question. I was convinced at that point in time that we could safely execute that warrant and believed firmly that because of the people we had watching, that we had up until the last second or two, there is a point of no return in these kinds of actions to abort and safely remove all the agents from that scene.

Mr. CONYERS. So why did not, Mr. Merletti, that get in the Treasury report?

Mr. MCCOLLUM. You may go ahead and answer.

Mr. SARABYN. I have had trouble, which I did with my talk with them, articulating that staging area, and the reason being is in my mind when I talked to Robert until I drove up there, I thought we could safely do it. I mean I was in front of the first truck, so if somebody is going to think I was going to have someone else up there, I am not going to kill myself. So I was in front of the first truck. So I thought we could safely do it.

Now, when everybody was not ready, I spit that out, they know we are coming, before I went into the phone conversation. I had trouble explaining that, because I think you are talking about a word you said versus a feeling you had inside. That is why when I was talking with them like I did at that point have trouble trying to explain that.

Mr. MCCOLLUM. Because we want to bring this out and we want to bring it out in some kind of order, I have intentionally, by agreement with the other side, allowed this to run well over 10 minutes. So our side of the aisle is going to add about 7 minutes I think to the time we have.

Mr. CONYERS. That is absolutely fine.

Mr. MCCOLLUM. I want to take one of those minutes right now myself, just one of those additional 7 minutes to ask Mr. Chojnacki a question. At the time that Mr. Sarabyn was going through this process, at some point he informed you, I believe, that Rodriguez in some way had made some comments to him in this imminent raid time. Did you at any time from the beginning of this raid proc-

ess that Mr. Sarabyn was just describing until the action started, did you call Washington, anybody in Washington?

Mr. CHOJNACKI. Yes, sir.

Mr. MCCOLLUM. Who did you call?

Mr. CHOJNACKI. After the conversation that we had on the tarmac, I walked back to the command center. We had a command post at the Texas Technical Institute Airport. At that location, I called the ATF headquarters command post. During that call, I believe that I talked to Special Agent John Jensen, who was one of the people staffing the command center. I advised John that the undercover agent was out of the undercover house, that as far as I could tell everything was fine and we were going forward with the raid.

Mr. MCCOLLUM. Is that the only call you made?

Mr. CHOJNACKI. Yes, sir.

Mr. MCCOLLUM. I am going to reserve the balance of the additional time we have added over here and I am going to yield for his normal time at this point to Mr. Blute.

I know there are many more questions about the raid. I do want to make the comment for anybody and all of us that we have a whole panel on the raid itself, and Mr. Sarabyn and Mr. Chojnacki will be back actually for that later panel. That does not mean we cannot ask those questions here, but there is going to be a lot of discussion we are going to get into as we walk through this process.

Mr. Blute, your regular time.

Mr. SCHUMER. Would the gentleman yield?

Mr. MCCOLLUM. I yield for a question, certainly.

Mr. SCHUMER. Just a procedural question. Mr. Chojnacki and Mr. Sarabyn will be back. Mr. Buford was part of that raid, too. Why is he not on the panel about the raid? He was one of the front leaders.

Mr. MCCOLLUM. We would be glad to bring him back again. It is just the size of the panel, that is all. At any rate, let us proceed right now in order. Let us get back in order again.

We see if it is permissible. If we can work it out, we will.

Mr. Blute, you have your 5 minutes.

Mr. BLUTE. Thank you very much, Mr. Chairman.

I would like to get into another issue that I think is very important in the whole scheme of things here during the buildup to the raid, and that is the relative quality and professionalism of the surveillance and undercover activities.

We have heard testimony and gotten testimony from Davidians who say to us that they marked these agents who were allegedly undercover fairly soon after their arrival near the compound. They noticed that the so-called college students were in their forties, for example. We have testimony from Mr. Thibodeau that although these students said that they attended the local technical school, when asked what their major was, they said philosophy.

We also have testimony that it was noticed by the Davidians that these undercover agent students were driving expensive cars and had Rolex watches. Indeed, we have had testimony that Mr. Koresh himself traced down the license plates and looked into whether

there were any liens against any of the cars, and found out indeed that there were not.

It would seem to me that undercover work is very important, No. 1, but it is also very dangerous. Is that true?

Mr. SARABYN. Yes, sir.

Mr. BLUTE. It would seem that it would be very important that the quality of the cover be very good.

Mr. SARABYN. We sought these undercover agents. We took them from a diverse background, and let me address the age first. The college right there was a technical college. It was very, very common for people to be 30 or 40 years old and go to the college. In fact, in their conversations undercover, one of the persons of the same age had also attended the college.

We tried to get a couple that were from the SRT teams, because they would think tactically, versus anything else. We selected Robert Rodriguez who had an excellent background as far as firearms. We knew Koresh liked firearms. We selected somebody that was a musician, that we knew Koresh was a musician, and maybe he could get in. So we got them from a diverse background. They had undercover ID obtained from the college, regular photo ID, the whole thing.

I believe in one of the conversations, the Davidians came over there and they talked about classes. They even went and got a brochure as far as what classes they had or whatever. There was some discrepancy right at the end where they pulled out, and apparently they quit that because it was spring break. That was part of the reason that——

Mr. BLUTE. Were you aware of heavy drinking amongst those undercover agents?

Mr. SARABYN. No, sir.

Mr. BLUTE. If I could refer back to the conversation between Mr. Sparks and yourself, Mr. Sparks during that conversation on June 15, 1993, says Health and Human Services are full of it, too, and I think the surveillance teams up there, you need to get up with Rodriguez and find out how much drinking was going on.

Mr. SARABYN. As I said earlier, Mr. Sparks was terminated for sexual harassment of several of the agents in the Austin office, and so obviously——

Mr. SCHUMER. Say that again.

Mr. SARABYN. Mr. Sparks was terminated for sexual harassment of several of the agents and the secretary in the Austin office. He is talking about Austin agents here. I think he may just be a little bit bitter.

Mr. BLUTE. Let me go on. He later says ask Rodriguez, who was the agent that was undercover, about the guys going in with him just to pick him up, about how they had to drink liquor just to have enough nerve to go into the compound.

Now, I would also point out that in your responses here, you do not refute any of that, and perhaps it was not something that you wanted to refute at the time. My overall point is that the undercover work I think was less than adequate, and the testimony we received from a number of sources seemingly put a mark on these individuals early on in the undercover operation and I think perhaps endangered them. I wonder if you think this is true. Were

they in any danger because they had been marked and the undercover was not very good?

Mr. SARABYN. It is a very tough role, sir. I have done a lot of undercover myself, and I cannot tell you how many people I have arrested and they said I knew you were a cop. I said why did you do what you did, sold me the guns or whatever. It is a common thing that, once it is over or whatever, it is easy to say I knew you were a cop. Obviously, we look back, maybe different people, maybe older persons or whatever—

Mr. BLUTE. As I said, if you look at the big picture and you hear earlier testimony about Mr. Aguilera being offered a phone to talk directly with Mr. Koresh earlier, and then you hear about some of these indications that Koresh and the Davidians had marked them as agents from early on, and then you hear about Mr. Rodriguez saying that they know about this and not being taken very seriously, I think I see a flawed intelligence and undercover operation in my own view.

Would you agree with that? Or would you agree that there were problems with the undercover operation?

Mr. CHOJNACKI. I really cannot speak to the problems in the undercover operations, because most of that was coordinated at Mr. Sarabyn's level with people that were supervising the activity from the Austin office. But I believe that in any investigation, regardless of the number of investigators, there are mistakes made. And when you look back upon the case or the way you plan your investigative scenario, you say, gee, I may have gotten more information if I had done it this way or something better. That is going to happen. In hindsight, when we review any kind of case, we find that kind of thing.

Mr. BLUTE. Let me just make one last point. I assume that when there is an undercover operation, for example, involving drug operations and drug trade, that the cover is very important because of the danger to those agents. I think that would be correct, and I think this is one area where the ATF needs to look at how they participated in undercover operations.

I yield back the balance of my time.

Mr. MCCOLLUM. Thank you very much, Mr. Blute.

Mr. Watt, you are recognized for 5 minutes.

Mr. WATT. Thank you very much, Mr. Chairman. I yield to Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Watt, and, Mr. Chairman, thank you.

I note despite any distinctions between the present status, certainly the majority of the individuals on the panel are ATF officers and made a commitment to follow the law, and so particularly I thank the witnesses for being here and note the witness from Houston as well.

I do believe that we should be focusing on consistency and, as well, getting at the facts, but realize that there were human failures. And that is how we rid ourselves of some of those abuses.

Mr. Merletti, if I can query you, I have heard since yesterday a number of questions have been asked based on notes that are said to have been made by Mr. Larry Sparks. And I have a document here marked with the Bates stamp 00010226, and I believe they

are passing that document out for your review. I would like to have you also look at 00614, which should also be passed out.

I would like to direct your attention to paragraph 26 of the last document I mentioned. Do you have the 00614, sir?

Mr. MERLETTI. Yes, I do.

Ms. JACKSON LEE. And do you see paragraph 26?

Mr. MERLETTI. Yes.

Ms. JACKSON LEE. Would you be kind enough to read that for me, please?

Mr. MERLETTI. "Sparks stated that he blamed the Austin agents for destroying his career and that he would do anything to get even. He characterized the Austin agents as sissies and snakes."

Ms. JACKSON LEE. Now, that came from—and I know how confusing it gets with a lot of numbers, but that came from the document that I previously mentioned, 00010226. My understanding is that these are notes by Mr. Sparks, and it appears that the notes reflect that they were done after June 1993, and it has come to my attention that Mr. Sparks was fired in May 1993 and was notified that he was going to be fired in January 1993.

Can you tell me why he was terminated?

Mr. MERLETTI. He was terminated for sexual harassment.

Ms. JACKSON LEE. So he was not employed, I guess, at the time of this tragedy?

Mr. MERLETTI. That is my understanding, yes.

Ms. JACKSON LEE. And so this reflects—if we are to look at trying to resolve what happened, can we find any substance to rely upon by a nonwitness—I understand that he was not present, is that my understanding, at the particular scene or the tragedy, as I understand it?

Mr. MERLETTI. That is correct. He was not present.

Ms. JACKSON LEE. But he is making representations at this time.

Mr. MERLETTI. Yes.

Ms. JACKSON LEE. Can you give us an explanation of the item in paragraph 26, the comment in paragraph 26?

Mr. MERLETTI. Mr. Sparks was fired, and he was upset. And he would do anything he could to get even with ATF.

Ms. JACKSON LEE. And so the survey of his notes, if you peruse them, you will find comments about Mr. Sarabyn and comments about—I see a statement here, statements that the ATF was outgunned and was true and Mr. Hartnett had, prior to the raid—just a series of summaries. Is this information that he did based on an official capacity?

Mr. MERLETTI. I believe this was after he was fired. However, I would just like to say, as an investigator, I would discount what he says.

Ms. JACKSON LEE. I think that because we need to determine firsthand—and I appreciate your comments because Mr. Blute has been reading from this gentleman's remarks, and they are quite extensive, and they appear to be a summarization of an eyewitness. You have just indicated to me that this gentleman was fired. You have indicated that he was fired—you have at least confirmed my statements, he was fired around May 1993. It appears that this document was written in June 1993. We have a problem here of a factual problem which we are trying to get at.

Mr. Chairman, then, I would ask that the Chair subpoena Mr. Larry Sparks as a witness because we have been relying upon this written statement or statements, and we now have a document that is based upon an interview where Mr. Sparks stated that he blamed the Austin agents for destroying his career and that he would do anything to get even, and he characterized the Austin agents as sissies and snakes.

I would ask that this Mr. Larry Sparks be subpoenaed as a witness.

Mr. MCCOLLUM. The Chair will take that under consideration along with the other requests that are being considered about other witnesses. Your time has expired at this point, Ms. Jackson Lee.

Mr. MERLETTI. Could I add—

Ms. JACKSON LEE. Could I finish my question?

Mr. MCCOLLUM. Yes, Mr. Merletti may add.

Mr. MERLETTI. I don't know the exact date of his termination. However, at a point during the investigation, he was removed from the Austin office. I believe he was reassigned to the Houston office. But I would still—I stand by my statements that he would do anything he could to get even with ATF. And as an investigator, I would discount these statements.

Ms. JACKSON LEE. Can you tell me when he was notified that he might be fired? Would you have at least a ballpark estimate of that time period?

Mr. MERLETTI. Mr. Sarabyn or Mr. Chojnacki may be able to answer that.

Ms. JACKSON LEE. Mr. Sarabyn, could you answer that please, sir?

Mr. SARABYN. I do not know the date. I know he was on administrative duties at the division, but I do not actually recall the actual date.

Mr. CHOJNACKI. He was still an active supervisor at the time of the initiation of this investigation, but just shortly thereafter, within a matter of a few weeks or a few months, the allegations against him had come out and we had to put him on administrative duties. Since he was the agent in charge in his own office, we could not leave him there, and we brought him into Houston to work in the division office performing an administrative function until the investigation was completed and proposal letter and decision came out regarding the allegations against him. So sometime around August, probably, of 1992, approximately, he was going to the division office, and the following spring he was actually terminated.

Mr. MCCOLLUM. Thank you very much. Ms. Jackson Lee, your time has expired.

Ms. JACKSON LEE. Mr. Chairman, a parliamentary inquiry just on your response. When we have a conflict in testimony, does that raise the level of necessity, or at least urgency, of having the witness come forward higher than possibly some other exploratory questions have been made? We have these documents being used as fact. I have now presented contradictory testimony, and my concern is—

Mr. MCCOLLUM. Ms. Jackson Lee, if I could respond to you, there is no rule, there is no regulation, there is no precedence, I guess, that we follow with determining who you bring or call as witnesses.



That is a decision the committee makes. Normally, the Chair and in this case there are cochairs make those decisions with consultation with all parties, and we are doing that with you. And we will do that further. But at the moment, that is not a decision spontaneously the Chair wishes to make. I do not think I should get into the habit of doing that. I think we need to talk about it along with witnesses such as those Mr. Taylor suggested and so forth.

We are going to have regular order right now. I am going to recognize—

Ms. JACKSON LEE. I only ask for fairness, Mr. Chairman. Thank you.

Mr. MCCOLLUM. I understand. Mr. Barr for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Bush will distribute to each one of the four witnesses a handwritten document numbered 14216. While he is distributing that, this is a handwritten note. It says something to the effect: Leroy, statements from agents, should they go to USA or us? Do they want us to create new—blank—asking questions to which would require us to create new documents exculpatory.

Do any one of the four of you recognize the handwriting on that document?

Mr. CHOJNACKI. I do not, sir.

Mr. SARABYN. I do not.

Mr. BUFORD. I do not.

Mr. MERLETTI. I do not.

Mr. BARR. OK. And I presume that means that none of you wrote that, the original of that document?

Mr. CHOJNACKI. I did not.

Mr. SARABYN. I did not write it.

Mr. BARR. Have you ever seen that document before?

Mr. SARABYN. Never.

Mr. MERLETTI. No, sir.

Mr. BARR. Do you have any idea what it is referring to?

Mr. BUFORD. I haven't got a clue.

Mr. BARR. If Mr. Bush would distribute document 14137, which is another handwritten note.

Mr. MCCOLLUM. If the gentlelady is requesting copies, we will see if we can have enough copies made and distribute those.

Mr. BARR. This document says basically, as far as I can tell: Texas Rangers, Ray Jahn does not want them, Chojnacki, Phil, re-interviewed because Jahn does not want any more exculpatory statements generated.

Do any of the four of you recognize the handwriting in that document?

Mr. CHOJNACKI. I do not, sir.

Mr. SARABYN. No.

Mr. BUFORD. No, sir.

Mr. MERLETTI. No.

Mr. BARR. None of you wrote the original of that document?

Mr. CHOJNACKI. That is correct.

Mr. SARABYN. No.

Mr. BUFORD. No.

Mr. MERLETTI. No.

Mr. BARR. I would like Mr. Bush to distribute document 19941, which you will be happy to know is a typed document. This is a memorandum from Ron Noble to Sara Elizabeth Jones dated September 17, 1993. It summarizes various events, including one that I would draw your attention to dated March 1, 1993. It says, as you can see, among other things, "ATF initiates a shooting review. David Troy and Bill Wood interview, Rodriguez and Maston, Chojnacki, Cavanaugh, Sarabyn, Troy tells review they immediately determined that these stories did not add up." Further on, it says, "Note, Johnston at this point advised Hartnett to stop the ATF shooting review because ATF was creating Brady material. Because Chojnacki had not yet been interviewed, Johnston authorized that interview, but no notes were created."

Were any of you at any time instructed or told that you would not be interviewed as part of the ATF shooting review?

Mr. CHOJNACKI. I was interviewed by the shooting review team.

Mr. BARR. OK. Is that the one that is referred to here that was authorized by Assistant U.S. Attorney Johnston?

Mr. CHOJNACKI. I can only presume it was, sir. I was interviewed one time.

Mr. BARR. Were any notes taken of that interview?

Mr. CHOJNACKI. I do not recall.

Mr. BARR. Did you see any notes being taken?

Mr. CHOJNACKI. I just cannot recall. I do not remember.

Mr. BARR. Did you take any notes.

Mr. CHOJNACKI. No, sir.

Mr. BARR. Were you allowed to take notes?

Mr. CHOJNACKI. I never inquired.

Mr. BARR. Is anybody else here, any of the four witnesses familiar with the directives to stop interviews so that no further evidence would be accumulated and no notes take at shooting-review interviews?

Mr. CHOJNACKI. I am somewhat familiar with the incident. I believe as the assistant U.S. attorney testified yesterday, he wanted and we wanted the Texas Rangers or some completely impartial law enforcement agency with the appropriate jurisdiction to conduct an investigation of the shooting situation. At this particular point in time, I am not sure about the transition of information between Mr. Johnston and the executives of ATF, but I believe he recommended that we stop our interviews so we did not create a number of different kinds of statements relating to the same situation. Each would create a Brady situation for the defense or whatever. And—

Mr. BARR. Mr. Merletti, does that sound to you as an appropriate way to conduct an investigation or a review that has or should have as its objective a search for the truth? Just yes or no.

Mr. MERLETTI. Sir, I am really not sure what this refers to.

Mr. BARR. OK. This refers to something called a shooting review. If you are not familiar with that, that is—or are you familiar with a shooting review?

Mr. MERLETTI. Yes, I am.

Mr. BARR. Well, that is what this refers to. It says it in one of the documents. Is the shooting review a review or an investigation

conducted in an effort to determine certain facts and circumstances surrounding the discharge of weapons during an ATF operation?

Mr. MERLETTI. Yes.

Mr. BARR. OK. And would, therefore, a purpose of that be the accumulation of evidence?

Mr. MERLETTI. Yes.

Mr. BARR. OK. Would it be then in furtherance of that search for the truth and the accumulation of evidence to receive directives from the Department of Justice not to conduct interviews, not to gather evidence, and where interviews are necessary, that no notes be taken?

Mr. MERLETTI. Sir, the only thing I could gather from this is basically what Mr. Chojnacki said; that the Texas Rangers were going to begin to conduct interviews, and that the ATF shooting review team was to stop. And that is speculation on my part. I think that is what this is about.

Mr. CHOJNACKI. I would like to add, sir, that it is not uncommon in some jurisdictions for us to slow down the shooting review situation if the local jurisdiction, for example, the homicide division of a police department, is very adamant about creating only one record. They would want one statement only from each particular witness, and it is not uncommon for us to slow down or let them conduct the interview and use their interviews to build our record for the shooting review. That has happened throughout the country.

Mr. BARR. Well, there are some other documents which we cannot go into right now that do not indicate that this has anything to do with the Texas Rangers. It has to do very explicitly with not accumulating evidence, and this is directives coming from the Department of Justice and the Treasury Department.

Mr. MCCOLLUM. Mr. Barr, your time is up.

Mr. BARR. We will go into those further documents.

Mr. MCCOLLUM. Thank you, Mr. Barr.

Ms. Jackson Lee, I believe you have your own time now if you wish it.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I would like to yield my time to Mr. Schumer.

Mr. SCHUMER. I thank the gentlelady from Texas for yielding to me.

First, a couple of points. One, I would like to admit to the record the administrative review documents that talk about Mr. Sparks' past history that Ms. Jackson Lee mentioned in her testimony. So I ask unanimous consent they be—

Mr. MCCOLLUM. Without objection.

Ms. JACKSON LEE. My questions.

Mr. SCHUMER. Your questions. Excuse me. Sorry.

Second, I guess I would just make a comment here. Many on this side of the aisle, including those who I have a great deal of faith in, are trying to persuade us that these are just objective hearings to find out the truth. And some of us sort of put our back up a little bit, and why is that? Well, here is an example. There are several.

Mr. Sparks is a rather discredited individual, and he is one individual, and he was removed from the ATF, and there is obviously some bitterness there. And yet time—and it is not just that he is

mentioned on the other side, but time and time and time and time again, they go back to Mr. Sparks. There are 60 people on the other side who say one thing. Mr. Sparks says another. Questions on that side do not ask about the 60 people, none of whom have been removed from an agency for bad purpose, and here, the same thing——

Mr. MCCOLLUM. I will give you an extra minute, but would you yield to me on that?

Mr. SCHUMER. I would be happy to yield.

Mr. MCCOLLUM. I just want to make the point that at least in two of those instances the comments and questions were based upon telephone conversations, transcribed in one case intercepted by the FBI, according to the records produced by the Justice Department, involving not just Mr. Sparks but in this case Mr. Sarabyn, who is the witness here. I think that is far different from simply relying on some statement Mr. Sparks gave. I just want to make the record clear.

Mr. SCHUMER. That is correct, but we are relying in most of these instances, with most of the questioning, on Mr. Sparks' recollection, such as reading in that Mr. Sparks said people had drinks and things like that.

Mr. BLUTE. Mr. Chairman, would the gentleman yield on that?

Mr. SCHUMER. If I get extra time, I would be happy to yield.

Mr. MCCOLLUM. I am going to give you whatever we need here.

Mr. BLUTE. Thank you, Mr. Chairman.

The documents that I referred to which related to alleged drinking by the undercover agents at the compound were not from any statement of Mr. Sparks that was taken under oath or taken after the fact. It was a phone conversation between Mr. Sarabyn and Mr. Sparks that was recorded by the FBI and given to us by the Treasury Department. Now, the issue is that these conversations were at the time just an exchange of views between two colleagues.

Mr. SCHUMER. Reclaiming my time, Sparks seems to me in a court of law to be a totally impeached witness, and yet we are not in a court of law. Everyone reports allegation, countercharge, allegation, countercharge.

If the folks on the other side had such concern, as they profess, for law enforcement and just to make things right, I do not think allegations like that would be—not mentioned—mentioning them is fine, but just repeated time and time again.

I will bring up another one. The methamphetamine issue has been probably the No. 1 issue talked about today, and let's just assume that the other side is right, that someone in ATF did not tell the truth, which is debatable but let's assume it. It has very little to do with what happened at Waco. Because whether there was methamphetamine or not, the military involvement, as every one of the witnesses I asked said, and it was not disputed, would have been allowed to do exactly the activities they did. So there was one agent in ATF who might not have told the truth. That does not discredit the agency, and that has very—almost nothing, in my judgment, to do with Waco.

Now, again——

Mr. MCCOLLUM. Would the gentleman yield on that point?

Mr. SCHUMER. I just want to finish my point and then yield to my good colleague from Florida.

If it was brought up once, I would say that should be part of the record. It has something to do with what is going on. No question. And probably we should bring out that not all Federal law enforcement officers always tell the truth all the time. The same would be true for Congress people, the same would be true for American citizens, doctors, lawyers, Indian chiefs, name it.

But it just is harped on time and time and time again. So it seems to me here we have a picture that is a complete picture, and there are some warts on the picture—warts that are rather tangential to the story. And the majority, who professes to simply want to get out the whole truth, that professes that they very much care and want to build up law enforcement, and, of course, do not like Koresh, focuses on those warts far disproportionately than I would think an objective observer would. And I yield to the gentleman from Florida.

Mr. MCCOLLUM. I thank you for yielding, and I am giving you the additional time. But the bottom line of the methamphetamine lab is that it was a very central point of a lot of the critics who have published a lot of writings out here. And the question of whether the military was properly involved or not was a very important issue for us to examine today.

We have discovered a lot of things about that, for the most part clarifying that, indeed, what was done was apparently proper. But there was one point about the methamphetamine—

Mr. SCHUMER. I would like the gentleman to repeat that. What was done—

Mr. MCCOLLUM. For the most part, I said.

Mr. SCHUMER. What was not proper?

Mr. MCCOLLUM. Well, I was about to get to that, if the gentleman would continue to yield. But it is very clear from the witnesses' testimony in that panel today that the particular unit that trained this ATF outfit did not have, as a matter of policy, the authority to train any civilian law enforcement agency unless there was a drug involvement. And ATF went to that particular outfit asking for that particular help and got it with the methamphetamine lab as the excuse. In addition to that, it was very clear from the testimony today that there was a question of cost reimbursement involved, and it involved being able to go to that unit where ATF would avoid the cost.

Now, I am not casting aspersions, but those were the facts brought out today. I just think that needed to be brought out for the record. Nobody is trying on this side of the aisle, to my knowledge, Mr. Schumer, to distort the facts or to mislead anybody. Our objective is, indeed, to bring out the facts. Let the chips fall where they may. And for the most part, you characterized it correctly today as far as the results of that particular panel as I observed it. But that latter point was a serious point we needed to clarify. We spent that time doing it, and we still at the end of the day had something out of it which said, hey, this really did smell kind of bad. It was not as bad as it could have been. But it was not all perfect either.

Mr. SCHUMER. OK, and thank you. And I presume now I have—

Mr. MCCOLLUM. You have an additional—let's say 3 minutes. How does that sound?

Mr. SCHUMER. I thank the gentleman. It is 3 minutes plus what I had left, which makes me have about 9 or 10 minutes. [Laughter.]

Mr. MCCOLLUM. I cannot quite do that, but I will be generous here.

Mr. SCHUMER. In any case, I would say again, let's assume first of all we did not—I appreciate the gentleman's integrity, which, again, I do not question. I have not heard that from most of the others on the panel, that what the military did and what their training was, I think his words were basically correct, "for the most part," were his words, correct. That is not the tone, and if you look at some of the stories that came out, I would say to the AP reporter, wherever he is, he did not report it that way. I would say one of the news stories tonight did not report it that way. So the impression that was given was different.

Second, I would say even if the gentleman is correct that the training should not have been given because no drugs were involved, I would say not, so what? but that is very minor. The training the military gave was minor in terms of this whole story, and the fact that it did not break the law seems to me to predispose. So, again, I make my point, little warts, not important to the whole picture, focused on by the other side, the big picture not. It makes me—and I will just speak for myself—doubt that this is simply an endeavor to evenhandedly bring out the facts.

And one other point I would make to my good friend from Massachusetts, who, again, I think he is a wonderful person and I think he has complete integrity. The Sparks conversations were not taped by the FBI. They were tapes that Sparks himself secretly made. Treasury, not DOJ, produced those transcripts. I just think that should be put in there for the record as well.

Mr. BLUTE. Would the gentleman yield?

Mr. SCHUMER. I will yield if I get an additional minute or so.

Mr. MCCOLLUM. I will be glad to add whatever time we take on this. You have used up 1½ minutes of the 3.

Mr. SCHUMER. Thank you. The gentleman is a careful and fair timekeeper.

Mr. BLUTE. I thank my good friend from New York, but, frankly, many of us have been hearing a lot from our good friend from New York, and we have a great deal of respect for his leadership and for him personally. But he seems to have made final judgments on every aspect of this case. He seems to know everything about this case. And I have to tell you that I have not made final judgments about every aspect of this case, and I think some of my colleagues have not made final judgments.

I do not know everything about every aspect of this case, and I do not think all my colleagues here know everything about every aspect of this case. That is why we are having this hearing. We are trying to put things on the table to get information so that the American people can make a final judgment ultimately on the events at Waco.

I would hope that the gentleman would please give us credit for trying to listen, trying to probe, and trying to put the information on the table without any agenda.

As I said earlier, the NRA is not—if you want to talk about harping on certain facts, the NRA is not a friend of mine. I have a zero rating from them. I am not here for them or for anyone else. I am here to represent my 600,000 constituents in Massachusetts who I think deserve to know what happened at Waco.

Mr. SCHUMER. OK. I would just say—

Mr. MCCOLLUM. The gentleman has another minute and a half. We are going to have regular order here. The gentleman has a minute and a half. We are going to close this part of this down.

Mr. SCHUMER. OK. I would say to my good friend from Massachusetts, I have not made up my mind completely. But I have not found in these 2 days a single new fact that I have not read somewhere in the materials that I was given and spent weeks reading to prepare for. Sparks is not new. Methamphetamine is not new. Nothing is new. So I would say to the gentleman, if these hearings are simply there, 8 days, big expense, lots of sound and fury—some of which I have contributed to—but lots of sound and fury—some of you have contributed to it, too. But lots of sound and fury, and it does not bring up a single new fact, which the first 2 days have not, then I think that should be part of the record. And it is true. I have some predispositions because I have spent a lot of time reading this and reading that and reading Mr. Reavis' book and reading all the other things. Believe me, it was not my choice to spend all my time poring through these details. I even had to learn how to say Mr. Chojnacki's name, which took me about a half-hour or 45 minutes. But no new facts have come out. No significant new facts have come out, in my judgment.

Mr. BLUTE. Would the gentleman yield on that point?

Mr. SCHUMER. No, I am not going to yield any further.

Mr. BLUTE. Just on that point.

Mr. MCCOLLUM. Regular order here—

Mr. SCHUMER. I am not going to yield any further. You can get some yielding from your—

Mr. MCCOLLUM. The gentleman's 1½ minutes is just about up. I have been very liberal with this. I am not—

Mr. WATT. Mr. Chairman, parliamentary inquiry.

Mr. MCCOLLUM. Mr. Watt, you can state a parliamentary inquiry, but it had better be one because I really do want to go on.

Mr. WATT. My parliamentary inquiry is whether all of this time that you are yielding is being done by unanimous consent, or does the Chair have the right to grant unlimited time to every member—

Mr. MCCOLLUM. The Chair has the right to be fairly liberal with this, and I was very liberal earlier. Your side actually has chalked up, I think I still have 6 minutes—

Mr. WATT. I am not talking about my side, Mr. Chairman. I am asking about whether you are granting additional time by unanimous consent or whether you are doing it on the prerogative of the Chair.

Mr. MCCOLLUM. Well, let's put it this way. Technically, it requires unanimous consent, but we have established that already

earlier by the precedence we are—nobody has been objecting to these discussions. I think they are very healthy to have a full and fair hearing.

Mr. WATT. We just engaged in 20 minutes of discussion here. Not one question was asked to the witnesses.

Mr. MCCOLLUM. Mr. Watt, you have made your point.

Mr. WATT. I just want to make it clear that I am going to object from now on to additional time so that we can get through these hearings. You all were the ones that started these hearings out talking about wanting to get through the process—

Mr. MCCOLLUM. Well, Mr. Watt—

Mr. WATT [continuing]. And getting to the bottom of the facts.

Mr. MCCOLLUM. Reclaiming the Chair's time, you would have the right to object, but the Chair has a right to have a second round of questions or whatever it takes to get through this. We are going to explore the facts however long it takes to get the facts—

Mr. WATT. Well, that is fine, but let's do it in regular order, Mr. Chairman. That is all I am asking. Follow the Rules of the House. If we are going to do it—

Mr. MCCOLLUM. Mr. Watt—

Mr. WATT [continuing]. Follow the Rules of the House.

Mr. BUYER. Regular order, and follow the Rules of the House.

Mr. MCCOLLUM. We are following the Rules of the House.

Mr. SCHUMER. Mr. Chairman, may I have 30 seconds?

Mr. MCCOLLUM. You have 15 seconds.

Mr. SCHUMER. I would ask Mr. Merletti just one—

Mr. WATT. I object.

Mr. SCHUMER. All right. The objection has been heard, but I have 15 seconds left.

Mr. MCCOLLUM. You are right. You have 15 seconds left, and there is no—you go ahead. You proceed. The Chair rules you are in order, Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

I would simply ask Mr. Merletti a general question, which is: Has he heard things here that he has not had an opportunity—that he thinks are incorrect or give the wrong impression that he has not had an opportunity to rebut? And give him time to do that.

Mr. MERLETTI. I still stand by what I said earlier, that the element of surprise was lost, that they knew it and they proceeded. When Mr. Rodriguez came out of that undercover house, he had the golden egg of intelligence. They did not pay attention to it. Actually, what they did was they sped up. There was a sense of urgency. They went to the compound prior to 10 a.m. There was no one outside. These were all parts that were critical to that raid. That is what we say in this book, and I take issue with the fact that they say this did not happen.

I have 61 witnesses that heard what took place at the staging area. As an investigator, if I had 61 witnesses on other things that I investigated, I would have never had an unsolved case. I cannot see how the facts on that could be disputed.

Mr. MCCOLLUM. Thank you, Mr. Merletti.

At this point in time, by previous agreement and consent, I still have 6 minutes of extra time, so to speak, that the chairman has in his discretion because of what happened—I do not know if Mr.



Watt was even in here earlier when Mr. Conyers was here. And I want to use one of those 6 minutes that have been reserved, just one I am going to yield to myself.

In that 1 minute, I just want to make an observation. No. 1, Mr. Schumer says there have been no new facts. At the end of this hearing, we are going to list a lot of new facts that came out. I think anybody watching this knows that a lot have. There may be an interpretation of which shading is this, or that, or the other; but there have been.

No. 2, even if not one new fact came out of a single set of these hearings—even if not one new fact, the hearings would still be serving the purpose for which they are intended, that is, to allow the American public one complete comprehensive opportunity to chronologically walk through the events of Waco.

We have had entirely too much questioning and doubt. If we are going to restore credibility to law enforcement in this country at the Federal level, and we are going to find the American public having faith in the congressional system of inquiry, these hearings were obviously necessary.

In fact, even today, the President of the United States, President Clinton said, at 2:30 this afternoon, "We have to hope some more good things will come, and we can learn how to do our jobs, and if Congress wants to have further hearings today, that is their right, and it is entirely appropriate."

He later said, "When people make mistakes, they ought to be held accountable, and appropriate action ought to be taken." We agree with all this. He says, "I think it is important to get the facts out here, quite clearly."

So the bottom line is that is what we are doing, even if not one new fact came out, but I believe at the end of the day quite a few new facts will have come out.

Now, in regular order again, I am going to yield to Mr. Clinger. It is his time, his turn. You have 5 minutes, Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr. Chairman.

I must say how much I am enjoying the witty give-and-take, the parrying and thrusting that is going on on the panel, but I think we are interested in hearing from our witnesses here, and for that purpose, I would like to yield to the gentleman from Georgia, Mr. Barr, the balance of my time.

Mr. BARR. I thank the gentleman.

Do you all have before you document No. 18994, dated April 14, 1993? Would Mr. Bush please distribute that.

This is yet another typed memorandum from Robert McNamara, deputy general counsel, Department of the Treasury, to John Simpson and Mike Langen, and the subject of this memo, gentlemen, is "Preliminary Investigative Plan."

And this document, on the second page, under the paragraphs entitled "Constraints" goes on to, in some detail, what I was getting at earlier, both in what appeared to be in the handwritten notes as well as very clearly in the typed memos.

"The prosecutors do not want us to generate additional Jencks, Brady, Giglio material or oral statements, which could be used for impeachment. At some point we're going to have to interview the critical witnesses."

Then it goes on to talk of passage of time, dimming memories. "The prosecutors are concerned that anything negative, even preliminary, could be grist for the defense mill."

And then the last page goes on to talk about not generating expert witness information.

Are any of you familiar with the subject matter of this memo with regard to the shooting review?

Mr. BUFORD. No, sir.

Mr. CHOJNACKI. No, sir.

Mr. MERLETTI. I am going to take a stab at it.

Mr. BARR. A quick one.

Mr. MERLETTI. In order for the Treasury, the WACO administrative review to do their investigation, we had to conduct interviews. There was a murder investigation being conducted by the Texas Rangers. In order for us to come into that investigation, we had to reach an accommodation with the Department of Justice. We had to have access to the witnesses. Now, I have never seen this before, but I believe that is what this is referring to—that we had to reach an accommodation—

Mr. BARR. Now why do not you take a look at them and see if you can find out. I do not think you are correct, because there is absolutely no mention of that in these documents, and I would expect, Mr. McNamara, being a good attorney, certainly would have set forth the basis for that, if that were the case.

The basis for this is something very different, and that is to stop interviews so that no further evidence is accumulated.

I would like to ask Mr. Sarabyn and Mr. Chojnacki, in your settlement agreements before the Merit System Protection Board—and I might say that for your personal reasons, you were very well represented on these—both of them talk about, I think basically identically removing information from the files of the case, and not disclosing information and removing and destroying certain files from them.

What was the purpose for that sort of language being included in there?

Mr. SARABYN. There are two references there, I am not sure which one you are talking about, but one is what we wanted, which was to expunge our personnel records to show no adverse action was taken against.

Mr. BARR. Right.

Mr. SARABYN. The second section was when they tried to remove us, they used the Treasury review book as the basis for removing us, and with that were supplemental statements supporting their proposal to remove us. And what they wanted as part of the agreement, to take that all away, and take that back. And so they took from the Merit Protection Board all those records.

They took the, you know, the statements that were obtained during the Treasury review. That was something that they wanted to do, is to get all those—

Mr. BARR. That would include the shooting review that we have been talking about?

Mr. SARABYN. Part of it is the shooting review notes; yes, sir.

Mr. BARR. OK. And how about those later provisions at paragraph 15, for example, that relates to removing and destroying files? Did the Government insist on that, or was that—

Mr. SARABYN. I believe so. Could I see the agreement, just so I speak correctly.

Mr. BARR. I will just read it to you. We are about to run out of time here.

It says, "Any documents in these files relating to or concerning disciplinary action will be removed and destroyed."

Mr. SARABYN. Those were our personnel files, that they would be showing no disciplinary action.

Mr. BARR. Well, no, those are the subject matter of a previous paragraph, that talks about those very explicitly, documents filed, which would be withdrawn from the official record of the appeal, and that is the one that talks about the administrative review team notes, the ATF shooting review notes.

In other words, there are two different sections here.

Mr. SARABYN. But I think the one you are referring to is just, you know, in our records, everything would be expunged and destroyed, so there would be no record of any adverse action ever taken against us.

It would just show a clean record. The only thing it would show was a voluntary reassignment.

Mr. BARR. And that is fairly standard, that language, in those type cases. The one that is not standard—and I have spoken with folks at the MSPB. Those relate to removing and destroying files.

Mr. SARABYN. My attorney is here, that represents me. Can he speak on that issue?

Mr. BARR. Well, they would have to be put under oath. I do not know how an attorney would feel about being put under oath; but that would be the only circumstance. [Laughter.]

Mr. MCCOLLUM. Does the attorney wish to be put under oath to respond to this question?

#### STATEMENT OF STEVE GARDNER, ATTORNEY

Mr. GARDNER. I have no opposition to that.

Mr. MCCOLLUM. All right. Let me ask you, if you would, raise your right hand. Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

Mr. GARDNER. I do.

Mr. MCCOLLUM. Please be seated, and you may answer that question, and after that answer, Mr. Barr's time has expired.

Mr. BARR. If the witness could also identify himself for the record, please.

Mr. GARDNER. I am Steve Gardner, together with Gail Dickinson, who is also here. We represented—I, Mr. Sarabyn, she, Mr. Chojnacki, before the Merit System.

Could I hear the question again, though, sir?

Mr. BARR. Well, I am somewhat familiar with these type proceedings as well, and I know it is standard procedure, or at least not unusual procedure, to contain or to require, or insist on, as part of a settlement agreement of this sort, that the adverse action, the subject matter of the adverse action be removed from the appellants' or the former employees' personnel folder. Both of these go

beyond that, and talk about removing and destroying files, and that, to me, is somewhat unusual.

Mr. GARDNER. Yes, sir, I think it is. I will note for the record, that as far as I have been able to determine, Treasury has not lived up to the promise to correct the personnel records to reflect the settlement. But leaving that aside, the insistence, by Treasury, on removing these files from the public record, was either unique or rare in the process before the Merit System Board.

Mr. BARR. That is my understanding.

Mr. GARDNER. I have limited experience, and I will tell you, I had never heard of doing that, taking a file that had been made a part of a public record in court. Ms. Dickinson is a former judge with the Merit System Board, and I am looking at her, to make sure I am being accurate here. This is, I think, unheard of by her, in several hundred, or even several thousand matters that the Board has considered.

Mr. MCCOLLUM. Mr. Barr, I believe your time has expired.

Mr. BARR. Who insisted, at Treasury, on that?

Mr. GARDNER. I would just call it rather a monolith. They were just the other side, Mr. Barr, and they would not settle with us without it, and we did not feel that it was worth fighting with Treasury in order to get our guys back to work.

Mr. BARR. OK. I thank the witness, and I appreciate the chairman's indulgence.

Mr. MCCOLLUM. Mr. Condit, you have 5 minutes.

Mr. CONDIT. Thank you, Mr. Chairman.

I would like to ask Mr. Buford, we have heard a great deal of information and insinuations in the last few minutes, the last couple hours, about you and your colleagues made up the possibility of the existence of a meth lab in order to justify not having to pay for the support of the National Guard for the helicopter.

You have heard some of this. I am shocked, if that is the case.

Let me ask you some specific questions about the possibility of the meth lab.

Did you simply make up the idea of the drug nexus to get support without paying for it?

Mr. BUFORD. I had, first of all, I had nothing to do with that, and I absolutely made up nothing about a drug lab. In fact in our preparations for the raid, we were taking into consideration the possibility that there would be a drug lab, and had DEA agents standing by at the command post to come in, if the lab was found.

Mr. CONDIT. So your men had prepared themselves with whatever equipment, because there are some chemicals that you have to deal with, and so on, and so forth?

Mr. BUFORD. Not specific equipment, but we did discuss the possibility of it being there, and the cautions that need to be taken in the event that a meth lab, a dismantled meth lab was located.

Mr. CHOJNACKI. May I respond to that?

Mr. CONDIT. Yes, sir.

Mr. CHOJNACKI. We felt that the potential existed for a meth lab to be there. Historically, everybody's aware that there had been the components for a lab back in the late 1980's. David Koresh contended that he was going to give that back to the sheriff's department.

Davey Aguilera, the investigating agent, checked with the sheriff's department and found that no such incident had occurred.

At least one of the receipts that Davey found in his research of things that were coming into the mag bag, into the compound, included a list of assorted glassware and chemicals that he thought might be precursor chemicals. He passed that information to DEA.

At the time of the raid on February 28, we had a DEA lab team supervisor on board in the command post. His lab team was standing by for a call in case we did find those kinds of chemicals or a lab, so that they could take over that very sensitive area of making that area safe while we began our search of the premises.

Mr. CONDIT. So when you say he was standing by, where was he standing by at?

Mr. CHOJNACKI. The DEA supervisor was in the command post in Waco, and his people were standing by at their office, I believe.

Mr. CONDIT. I want to go back—

Mr. SARABYN. Can I add a little more to that.

Mr. CONDIT. I am sorry. Mr. Sarabyn.

Mr. SARABYN. The information—you know, this was a firearms and explosives investigation. All this information about the meth lab came to us from other people in affidavits, there were some court records from Michigan that were about this. All this information, you know, came to us. There was nothing that we sought out.

There was another individual, Mr. Butler, who was a resident at the compound, and he had a—he was there from 1990, or 1992, and he had an amphetamine conviction. He got 3 years.

And you know, a lot of times some of the conversation with the military today, they talked about, "We might have not have been addressing it like a lab case." They work with DEA all the time, and when they are working with DEA, they are focusing on the meth lab because that is what the whole case is about.

Our case was a firearms and explosives case. We were aware it was there, we were taking preparations, but never were we investigating this.

It just turns out the information just kept coming out from ex-Davidians, or whatever, and when they asked us what is there, we just turned over, you know, their criminal histories or the affidavits.

Mr. CONDIT. I would like to get back to that, but I would like to ask Mr. Chojnacki to respond to this, to the planning. Besides the dynamic entry, what other options were considered? Why were the other options rejected, and what would you do different today?

Mr. CHOJNACKI. We had probably considered any gamut imaginable. Some of the people that were on the planning committee came to me afterwards, and said that they were surprised at how much latitude I gave them to free-think the different kinds of techniques that we might exercise.

We had talked about waiting for the arrest warrant to be approved, and trying to take David Koresh off at some other location.

I have heard testimony earlier regarding that kind of scenario, and one of the things that we considered very strongly in that area was that if we had him in our custody, while we still had him in our custody, if his people found out, because of his supporters, who

could make a phone call, that we had him, what would their reaction be?

They would know we were coming with a warrant. They would have plenty of time to set up a defensive position, if that was their intention.

We did not know what their mindset was going to be. Would they be collapsed because we had their messiah, or would they come to his defense? Would they possibly come into the community to get him out of the county jail?

We did not know what they would do. So we thought that that was a tactic that we did not want to employ. Based on our own history of having used the kind of raid that we use in firearms and narcotics cases, with some regulatory we have probably done, I think statistically, some 10,000 raids over the last several years.

Forty-nine percent of the defendants that we arrest are people that are actively engaged in narcotics violations as well as the firearms violations. They kind of run hand in hand.

So we are always involved with people of that nature, and as was testified to earlier this morning, in almost every situation, where we use a rapid entry and an overwhelming force, and what we think is overwhelming firepower, the people surrender rather than fight law enforcement.

Occasionally, one or two might do something, and usually with a minimum amount of injury to either side, you take care of that situation.

We did not anticipate that these people would set up to ambush and kill us.

Mr. McCOLLUM. Your time has expired, Mr. Condit. But I think that was a very full answer.

Mr. Mica, you have 5 minutes.

Mr. MICA. Thank you, Mr. Chairman.

If my staff could distribute some copies of this little organization chart to the witnesses, and I think they have been distributed to the other members, but you might like to look at them.

I do not know how good it is in chart-making, in organizational charts, but I hope it is somewhat reflective of the chain of command for the Waco operation.

And at the bottom we have Chuck Sarabyn and Phil Chojnacki who are civil servants. I happen to be chairman of the House Civil Service Subcommittee, and I have a great interest in you and your service.

Mr. Merletti, you helped produce this document here?

Mr. MERLETTI. Yes, sir.

Mr. MICA. This document, known as the Treasury report?

Mr. MERLETTI. Yes, sir.

Mr. MICA. And on page 7 of it, does it not say that, "The investigation also found disturbing evidence of flawed decisionmaking, inadequate intelligence-gathering, miscommunication, supervisory failures, and deliberately misleading post-raid statements about the raid, and the raid plan by certain ATF supervisors." That was your conclusion?

Mr. MERLETTI. Yes, sir.

Mr. MICA. And was not this report, in September, part of the basis on which these gentlemen were fired?

Mr. MERLETTI. Sir, I do not know. I was not involved in any of the administrative action as far as discipline.

Mr. MICA. Mr. Chojnacki, you were fired. Among other things, the ATF alleged that your gross failure to properly supervise the raid, and for lying to the Treasury investigators, and the Texas Rangers. Is that correct? Are those the charges they brought against you?

Mr. CHOJNACKI. Basically they are, sir.

Mr. MICA. Mr. Sarabyn, you were fired, among other things, because the ATF alleged that your gross error in recommending that the raid of the Branch Davidians go forward, even though you knew it was compromised, and for lying to Treasury investigators and the Texas Rangers. Is that not the basis on which they—

Mr. SARABYN. Yes. Basic substance there.

Mr. MICA. And then we had yesterday, your supervisor here, Mr. Daniel Hartnett, and he testified before us, and his comments were that report, this report here, dedicated to the four ATF agents—right in the front, do you see that?—dedicated to the men that were killed in this. The four agents this text is dedicated to.

He testified that he said—this is a statement from January 9, and it tracks what he said—“that report was filled with distortions, omissions, and in some cases, things that were simply untrue. I believe it was done for political purposes. The politics of the situation became more important than the people involved.”

And these two people are civil servants, and were fired. Then you are here testifying to my colleague, that there is the destruction of disciplinary action records. Is that correct? They have been destroyed?

Mr. SARABYN. They were supposed to be destroyed. I do not know that they are.

Mr. MICA. And we have no record of that.

Mr. Sarabyn, do you agree with the comments of your supervisor, Mr. Hartnett?

Mr. SARABYN. Well, Mr. Chojnacki was my immediate supervisor.

Mr. MICA. I am sorry. Mr. Hartnett—what he said before this committee yesterday. And Mr. Chojnacki. Both of you. What do you think of his comments to this committee?

Mr. SARABYN. Specifically what comment? I mean, he testified for a long time.

Mr. MICA. His comment, this report was filled with distortions, omissions, in some cases things that were simply untrue.

Mr. SARABYN. I feel that the report is like 70 percent very accurate. It has some good comments, it has some good things, and the other 15 percent is distorted, in my opinion, and then 15 percent is not true. I mean, that is just an approximate.

Mr. MICA. Go ahead.

Mr. CHOJNACKI. Yes, sir, I have to agree with that sentiment.

Mr. MICA. I feel they made you the scapegoats. You are the little guys down the pike. They fired you.

Everybody else got some retirement. In fact there are people here with full retirement benefits, and some people went by the way-side; but they fired you, too. Is that correct?

Mr. CHOJNACKI. Sir, it is, but for the record, I was eligible for retirement. I sought to appeal the decision.

Mr. MICA. And both of you were reinstated with back pay.

Mr. CHOJNACKI. Yes, sir.

Mr. MICA. So there is a little bit of justice.

I have a question, Mr. Merletti. Is ATF developing a table of penalties to provide guidelines for future disciplinary actions?

This is ATF's guidelines, and what penalty would you recommend ATF adopt for lying to law enforcement officials who are conducting an investigation such as this Treasury report produced by you and Mr. Noble, who will soon be with us, and lied about these incidents and these civil servants?

Mr. MERLETTI. You are asking me what I think ATF should do?

Mr. MICA. Yes. There is no penalty in here. I read the whole darn thing and there—

Mr. MERLETTI. Sir, I do not work for ATF.

Mr. MICA. I know. But what do you think should be in here? Do you think there should be a penalty? You helped write this report.

Mr. MERLETTI. Sir, I can tell you, I helped write this report. We interviewed—we did in excess of 500 interviews.

As I told you earlier, we have 61 witnesses. If you recall, right after the raid, the big point was was the element of surprise lost, or was it not?

The line agents stood up and told us the truth. I have 61 witnesses that said they heard that. Do you expect me to ignore that? That is much more probable cause than I would ever expect on anything.

Mr. MICA. This report was the beginning of the basis, in September, of which these gentlemen became the fall guys and were fired. And then they were rehired. Is that correct?

Mr. SARABYN. Yes, sir. Reinstated.

Mr. MICA. Reinstated.

Mr. MCCOLLUM. Mr. Mica, your time has expired.

Mr. MICA. I hope to get back to this line of questioning. I thank you, Mr. Chairman.

Mr. MCCOLLUM. Ms. Lofgren, I believe you are next in line. Five minutes, if you wish.

Ms. LOFGREN. Thank you. Maybe I will not need the whole five.

Mr. Chojnacki, what kind of training did you get, before you became an officer, in psychology, or that sort of field? What kind of preparation did you get?

Mr. CHOJNACKI. In terms of psychological training?

Ms. LOFGREN. Yes.

Mr. CHOJNACKI. I cannot recall that in the ATF basic schools, that we have a block in—

Ms. LOFGREN. Or subsequently. Was that something that you were trained in as an agent?

Mr. CHOJNACKI. No, ma'am; not really.

Ms. LOFGREN. How about you, Mr. Sarabyn? Was that part of your training?

Mr. SARABYN. I have a degree in criminal justice, which it was like, you know, a minor, where there were psychology classes, and, you know, we have had some training throughout our career, where it addresses that.

Ms. LOFGREN. Mr. Buford, about the same experience?

Mr. BUFORD. Whether I had any formal training in psychology?



Ms. LOFGREN. Yes.

Mr. BUFORD. I took a couple of psychology courses in college, and working on the street for as many years as I have, I have had a lot of time——

Ms. LOFGREN. The Department does not make that part of the training for its agents?

Mr. BUFORD. No, ma'am.

Mr. CHOJNACKI. What I could say about that, though, is that in the management scheme of things, there are courses that could be considered psychology, in terms of how to deal with people, disgruntled employees, things like that, but not formal training in—necessarily dealing with——

Ms. LOFGREN. I was interested in the comment—I want to ask Mr. Merletti, as the author of the report. Going way back, the details of the raid and the surprise have been adequately covered, but as I see the picture, I mean, there were reams of material available to the Federal Government from the district attorney's investigators, from Mr. Aguilera, even during the hostage negotiation sessions, that painted this picture.

We had a man who thought he was the Messiah. We had a pattern of that man raping very young girls, 10-, 11-year-old girls, and having them have his babies.

The men in the compound had been separated from their wives, and forced—or willingly, I guess, agreed to be celibate, and their wives also became sexually available to Mr. Koresh.

The parents did not object to their little girls being made available to Mr. Koresh. Information existed that 8-month-old babies were beaten until they bled, and the parents agreed with that.

This is not normal behavior that you find every day, and I am wondering—based on that, I certainly accept your testimony that in more than half the cases, with the element of surprise people will give up.

But I am wondering, on page 134 of the report, you are talking about a failure to adequately look at other alternatives.

What part of the team should be involved? What was lacking in ATF, in terms of expertise, to really psych these people out, what they would do, what would work in this situation, and what do we need to do in the future to make sure we can do the most prudent thing?

Mr. MERLETTI. And first of all, I would like to say that I do agree with your description of David Koresh. I feel that he was a maniacal megalomaniac.

I think what ATF could have done different—and again, this is in hindsight—their intelligence-gathering system really was not providing to the planners the information that was necessary for them to put the plan together.

Ms. LOFGREN. Had that information been provided to the planners, did the planners have the expertise to fully evaluate it?

Mr. MERLETTI. Mr. Buford was involved with a case dealing—as he talked earlier about—Covenant, Sword, Arm of the Lord, and he did have a lot of experience.

The other planners had experience in a number of smaller street raids. It is difficult to answer.

I think that with the intelligence system being improved, they would have had a better—

Ms. LOFGREN. Well, I am not trying to be a Monday-morning quarterback. I am trying to look and see how we can be better prepared in the future. And thinking about, say, cognitive dissonance, I think it is reasonable to think that people who bought into this so much, that they would allow their own 11-year-old daughter to become the wife of this man who is the messiah, are not going to say, Oh, well, we have been under siege for a while, let's give up. Or that is not the pattern of behavior in this material, and this kind of behavior.

I know Mr. Buford had reservations throughout about the siege. I am just sort of wondering what kind of team do we need to bring in, beyond just law enforcement, so that the appropriate steps to really bring closure in a way—you know, and I am not even faulting the agents here.

I mean, they were apparently not trained to have that information. They were trained to be cops. And I respect that.

So the question is what additional expertise do we need to bring in? It looks like Mr. Buford would like to comment as well. He is grabbing his mike.

Mr. BUFORD. Well, it is very difficult, going into an investigation of this type. I have been involved in two, one, where I was—there were several case agents through the several years that the investigation took place, but I ended up with the investigation, and had been the supervisor of the investigation the entire time.

I know that in both of these cases, there was a lot of reference to the Book of Revelation in the Bible, and during the CSA investigation I spent hours pouring through the Book of Revelation and discussing this with people, trying to get the mindset of the individuals.

And in the future, if anyone in law enforcement, not just ATF, has to deal with a religious, for whatever—I hate to even use that term—

Ms. LOFGREN. Try cult.

Mr. BUFORD. Well, I did not want to use the word cult either. I think that is overused sometimes. But with a group of people who have a, what they claim to be a religious philosophy, we need to have as much input from biblical scholars, as possible, to try to get into their mindset.

However, the decisions to make—that have to be made, on how to execute the warrants, still have to be made by the law enforcement people, who feel like that with this information they can make this raid as safe as possible.

Psychologists and religious people can definitely give you some insight and should be contacted. But the actual raid planning, and how to best neutralize the situation in order to execute a warrant or an arrest, has to be left to the law enforcement officials with the expertise to do so.

And each individual situation is different. With the CSA, we did a siege-type operation that was extremely successful. Not a shot was fired.

I was convinced that a siege-type operation based on what I knew, and my experience with the CSA, would end in a mass sui-

cide, and I felt like that by doing a dynamic entry, for lack of a better term, neutralizing the situation as quickly as possible, would prevent loss of life on either side.

And believe me, we were as concerned about the children inside that compound as anyone. That distresses each and every one of us. I see those children every day.

Mr. MCCOLLUM. Thank you, Ms. Lofgren, your time has expired. Mr. Buyer, you are recognized for 5 minutes.

Mr. BUYER. Thank you, Mr. Chairman. It is a shame that Mr. Schumer is not present in the room, because I wanted to extend a compliment to him. I guess I can extend the compliment to him in his absence.

He shouldn't be quite surprised. I guess he was upset that Members might try to characterize what has been said because Mr. Schumer is quite a verbal artist with regard to—and actually, probably one of the best when it comes to articulation in the Congress—and characterizes issues a lot.

It is interesting. Tim Russert of New York, who many people know from "Meet the Press" and he is on the "Today Show" as a political commentator, on the 20th of this month gave a quote. Actually, Tim Russert is a former staffer of the late Bobby Kennedy. Tim Russert said, about these hearings, he said, "David Koresh may be a wacko, he may be weird, anything you want to call him. The fact is, whenever the Government kills people you have to look at it and look at it hard." I thought that was a pretty interesting comment.

Something that I heard here in testimony concerns me because in our request—and there are a lot of documents, thousands and thousands of documents, and there are some we haven't even actually been able to get to, the way they got dumped on us here at the last—but with regard to a methamphetamine lab, all of a sudden we hear today for the first time, that there was DEA present when we had the Administrator of DEA say DEA wasn't involved in the case. They were contacted.

Mr. SARABYN. Sir, I don't know who that—

Mr. BUYER. Can you clear that up for me?

Mr. SARABYN. I don't know where the panel member was or the witness came from, but the DEA person that we requested was from that, you know, that Austin area. Someone in their headquarters would have no idea. I mean, that is just something that would be done on a local level. He wouldn't know what anybody else in their—

Mr. CHOJNACKI. In addition to that, sir—

Mr. BUYER. Yes, go ahead.

Mr. CHOJNACKI. I have seen DEA 6's, that is their standard report of investigation, indicating their acknowledge that Davey Aguilera came to them with that information, so I know that he passed the information and I met the supervisor myself. There is no doubt they were there.

Mr. BUYER. Are the three of you OSHA-certified to take down a meth lab?

Mr. CHOJNACKI. I am not, sir, but on my staff I have a DEA-certified individual. He was not there with the responsibility of taking

down the lab. The DEA supervisor was there to initiate that action, if it was actually there.

Mr. BUYER. DEA-certified. The question is OSHA-certified. So you are not OSHA-certified to take down a meth lab. Mr. Sarabyn, are you?

Mr. SARABYN. No, sir.

Mr. BUFORD. I am certified to execute a warrant, secure the premises, and call in the OSHA. I have taken the DEA training on how to secure the area prior to the OSHA team coming in.

Mr. BUYER. With regard to some of the testimony of other witnesses about the dynamic entry and if there is a meth lab, you don't go in shooting, and the concerns, was that talked about in the planning, the tactical planning stage? Yes.

Mr. BUFORD. Yes, sir. Only briefly, because this was a firearms investigation. The meth lab was very secondary and we don't normally investigate meth labs.

It was my understanding that if there was, in fact, a lab there, it would be dismantled and we were taking all precautions. Our agents have had the training. If they saw something that looked like a meth lab, they know to isolate that area and secure it until the proper people can get there.

Mr. BUYER. Were the three of you present in Houston at this meeting when the medic who testified, the panel before us, said that he wrote this paper on how to take down a meth lab, Sergeant Fitts? Were the three of you present at that meeting?

Mr. SARABYN. I was present at that meeting.

Mr. BUYER. Did you receive that report from him?

Mr. SARABYN. No.

Mr. BUYER. You did not?

Mr. SARABYN. Like I said, they normally work with DEA and the whole focus of their search warrant is to get the lab. So when they are working to get assistance, they plan it out. They go through it.

We made all our agents aware that it was there. You know, there are a lot of things volatile. We were going for explosives, also.

Mr. BUYER. Right.

Mr. SARABYN. So obviously, they have to be very careful when they come on that and deal with it. But, we had the people standing by to assist us with that.

Mr. BUYER. All right. Mr. Merletti, are you familiar with any documents out there, that you found in your investigation, with regard to the meth lab?

Mr. MERLETTI. Sir, in our investigation, we did find that there were two DEA agents requested to be at the command post. They were there.

Mr. BUYER. OK.

Mr. MERLETTI. And two others were on call.

Mr. BUYER. All right, that is helpful to me.

The ATF special response teams came from three separate cities, is that correct?

Mr. MERLETTI. Yes, sir.

Mr. SARABYN. Yes, sir.

Mr. BUYER. Had they ever worked together before? Had the response teams worked together?

Mr. CHOJNACKI. The response team concept is relatively new. In previous investigations, a few years earlier than that, the Dallas Division and the Houston Division of ATF worked very closely together in a massive arrest and raid situation, but we didn't have SRT's at that particular time.

Some of the teams do train together, and even in their initial training, I think it is usually two teams at a time that train together to get accustomed to working in a coordinated fashion.

Mr. BUYER. All right, I see that my time is up. I will return to this.

Mr. MCCOLLUM. Thank you very much, Mr. Buyer.

I think, Ms. Slaughter, you are next up. Would you like to take your 5 minutes?

Ms. SLAUGHTER. I would, thank you very much, Mr. Chairman.

Gentlemen, first, I want to say how glad I am that you survived and I am continually proud that you have people in this country, when their Government asks them to go in and do a job like that and put their lives on the line, that you will go.

Mr. Buford, I would really like to concentrate on you, if I may. I really just want to let you talk. There was a lot of conversation here yesterday. Witnesses talked about the kind of uniforms that you wore and the kind of equipment that you had with you, implying it was greatly overdone. And also, that only the grenade shells there were just paperweights.

I know you made it into the window of the gun room, but I wonder if you would tell me about the equipment you wore, Mr. Buford, and whether or not you even found it adequate to the job?

Mr. BUFORD. The equipment we wore, ma'am, in fact I have a couple—I don't know if ma'am is the proper term, I am sorry, but I am from the South. That is what I use.

Ms. SLAUGHTER. Me, too.

Mr. BUFORD. I have a helmet here and a ballistics vest and a carrier that were actually used.

Ms. SLAUGHTER. I would like to see them.

Mr. BUFORD. I would like to show you those, if I might.

Ms. SLAUGHTER. I would like to see them.

Is it the same equipment, Mr. Buford, that the agents that were killed were wearing?

Mr. BUFORD. The vest that I am going to show you, actually one of the Texas Rangers has the helmet and the vest carrier outside and, hopefully, he will have that in here very shortly.

Ms. SLAUGHTER. OK.

Mr. BUFORD. But, we wore a standard Kevlar helmet. We wore safety goggles, that are to protect your eyes from anything that might come along. We wore no Kevlar masks—not Kevlar—the Balaclava, the ski masks, as many have accused us of doing. That is just an absolute lie on their part.

We wore the level 3 body armor, which gives you added protection. Many of us had ceramic shockplate in the front, which would take a high-velocity round, and over that, we wore a vest carrier, which plainly identifies us as ATF agents.

The vest itself, this is a level-3-type vest, but our special response teams use a vest that is larger than this, that actually has

a collar on the front which helps protect your neck area. On the back, in bold letters, is the fact that we are ATF agents.

This is the standard vest that we wear. It is the standard vest that is used by most police departments. There is the general rule, as far as special response teams are concerned, is that they will—almost all teams now wear the Kevlar helmets. The Kevlar helmet will, at least, deflect high-velocity rounds and have saved many lives of our law enforcement agents.

In fact, we had several of our agents who took rounds to the helmet, that would have been killed had they not been wearing the helmet. But, this is all standard, not only for just SRT's or SWAT teams, but just for our agents when they run their warrants.

Ms. SLAUGHTER. Tell me about the grenades. You saw grenades with your own eyes?

Mr. BUFORD. Yes, ma'am. When I went into the arms room, after I was first shot, I fell back and landed next to a box. In this box, there were Mark 2, or the pineapple-type, handgrenades. There were a large number of them in there. I didn't take the time to count them, but they did not appear to be paperweights.

I remember very distinctly that the bottom on one that would be used for a paperweight, there is a hole in the bottom. These are practice grenades.

The holes in these had been welded up and on the end of the grenade was the fuse that is used with the pins in place. I believed those to be live handgrenades.

Ms. SLAUGHTER. Were any of those used against any of the agents, at all?

Mr. BUFORD. Yes, ma'am. We had a number of agents that were wounded when handgrenades were thrown from inside the compound out. In fact, the special response team leader from the Dallas team received 44 separate shrapnel injuries when one of these handgrenades went off in his face.

Ms. SLAUGHTER. And you did, as well?

Mr. BUFORD. No, ma'am. Mine was all gunfire.

Ms. SLAUGHTER. Did any of the shrapnel fragments penetrate that vest or that helmet that you were wearing or any of the other agents?

Mr. BUFORD. The vest stopped a lot of the shrapnel and a lot of the bullets that were being fired.

Ms. SLAUGHTER. Can you say something about the boots, jackboots, that people accused you of wearing?

Mr. BUFORD. Ma'am, we don't wear any. I know a lot of people like to think we wear jackboots, but—

Ms. SLAUGHTER. Jackbooted thugs, I believe.

Mr. BUFORD [continuing]. But I think that is a term that is probably not appropriate.

We wear a standard lightweight boot that is nylon on the sides and has got a rubber sole.

Ms. SLAUGHTER. Thank you.

Mr. MCCOLLUM. Ms. Slaughter, thank you. Your time is expired.

Ms. SLAUGHTER. Thank you.

Mr. MCCOLLUM. Mr. Chabot, I believe you are next.

Mr. CHABOT. Thank you, Mr. Chairman.

Mr. Merletti, your report clearly stated that Sarabyn and Chojnacki had lied to their superiors and to investigators about what Rodriguez had told them. Basically, the fact that Rodriguez had told them that Koresh knew they were coming. That seemed to be one of the big issues involved in this whole case.

You stand by your statement and by the report that they both knew that; is that correct?

Mr. MERLETTI. Yes, that is.

Mr. CHABOT. OK, and you also, I believe, say in the report that they actually altered documentation; is that correct?

Mr. MERLETTI. The raid plan.

Mr. CHABOT. Tell us about that.

Mr. MERLETTI. At some point in the Texas Ranger murder investigation, the Texas Rangers asked for the written raid plan. When they received it, they received two documents and they were different. There had been some additions and these additions—investigation showed that these additions were put in after the raid.

These additions were not so much—not that they were lies. It just put ATF in a better light. Or, I should say, it put the raid commanders in a better light.

Mr. CHABOT. In other words, after the raid occurred, the original records that explained what was going to happen with respect to the raid, were changed to make ATF not look as bad; is that correct?

Mr. MERLETTI. I would say, not to make the raid commander look as bad.

Mr. CHABOT. OK, and by the raid commanders, you are talking about Mr. Sarabyn and Mr. Chojnacki; is that right?

Mr. MERLETTI. Chojnacki, yes.

Mr. CHABOT. Chojnacki, OK. Now, lying to investigators is a criminal offense, is it not?

Mr. MERLETTI. Yes, it is.

Mr. CHABOT. In fact, changing documents is also a criminal offense?

Mr. MERLETTI. Yes.

Mr. CHABOT. In fact, let me read from the United States Code, right here, which states, under "Fraud and False Statements:"

Whoever, in any matter, within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact or makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined under this Title or imprisoned not more than 5 years or both.

So, clearly, that is a criminal offense. Now, did you or anyone in the Treasury Department, knowing that these individuals had lied or that they had changed documents, did you or anyone in the Treasury Department recommend that either one of these folks be referred for criminal prosecution?

Mr. MERLETTI. Sir, I investigated the case. You would really have to ask the attorneys that were involved in that. I am not sure—it just is a case that was presented to a U.S. attorney. I don't know where that went.

We dealt strictly with——

Mr. CHABOT. Not to interrupt you, but it didn't happen, to your knowledge, correct?

Mr. MERLETTI. Pardon me?

Mr. CHABOT. It didn't happen. They were not referred for criminal investigation.

Mr. MERLETTI. I can't say. I can't say that.

Mr. CHABOT. Have you heard that they were charged with a crime? That they went to trial on the basis of any charges?

Mr. MERLETTI. I know they didn't go to trial on it, but it may have been referred to the Department of Justice. It may have been referred to the Office of Integrity.

Mr. CHABOT. Let me ask the gentlemen.

Was either one of you gentlemen referred for prosecution? Were charges brought against you for either lying or for changing documents?

Mr. CHOJNACKI. On September 29, 1993, Secretary Bentsen advised the public in his public statement on television that the administrative report would be forwarded to the Department of Justice for them to look at it in relationship to a criminal prosecution of the two of us.

Mr. CHABOT. OK, and was either one of you charged?

Mr. CHOJNACKI. We have not been charged, but we have not been provided any documentation to show that we won't be charged.

Mr. CHABOT. Mr. Merletti, were you aware of any recommendation that they be charged?

Mr. MERLETTI. I now know that the Inspector General's Office referred it to the Department of Justice. That is all I can tell you.

Mr. CHABOT. But at this point, neither gentleman has been charged. I am not suggesting that they should or should not be, but the fact of the matter is, they have not been charged at this point in time, and this is 2 years after the fact.

Mr. MCCOLLUM. Mr. Chabot, your time has expired.

Mr. CHABOT. Thank you.

Mr. MCCOLLUM. Mr. Taylor, you are recognized for 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman.

Like Ms. Slaughter, I want to thank you gentlemen for putting your lives on the line, and what you thought and what you knew in your hearts was to protect other Americans against someone who was dangerous. Someone who Mr. Merletti's testimony here tells us that the paper that printed the article about these people, changed the locks, issued building passes, took the identifying decals off of their automobiles, and got the two reporters who wrote the story out of town.

Now, Mr. Merletti, why do you think they did that?

Mr. MERLETTI. They are afraid of Mr. Koresh.

Mr. TAYLOR. They were afraid of Mr. Koresh, a dangerous man.

Mr. MERLETTI. Absolutely.

Mr. TAYLOR. Absolutely. Mr. Buford, I want to thank you additionally. Those of you who I am not familiar with, for your service in Vietnam.

Mr. BUFORD. Thank you, sir.

Mr. TAYLOR. Did you ever suffer that bad an ambush in Vietnam? Were you ever outgunned that badly in Vietnam?



Mr. BUFORD. I was in several ambushes that we didn't win, but that was as devastating a firefight as I was ever in.

Mr. TAYLOR. So you are talking a group that was supposed to be a religious group, has more firepower than the Vietcong who was supplied by the Soviet Union and the Communist Chinese.

Mr. BUFORD. That is correct.

Mr. TAYLOR. In the two experiences that you had.

Mr. BUFORD. Yes, sir.

Mr. TAYLOR. Again, I think some people are getting way off on tangents. They are forgetting who the good guys are and who the bad guys are, and we shouldn't.

There are 4 dead ATF agents and 20 who have been wounded, and we cannot forget that.

Don't you think, in fairness to those agents, that we should get these two reporters who wrote the story, who were so afraid for their lives that they left town? Don't you think we should subpoena them and have them tell the story so that the people of America can know the events that led up to this tragic raid? Don't you think that is fair?

Mr. BUFORD. I would love to see that happen, along with the television news reporter who actually told the Davidians that we were on the way. I think that would be an excellent idea.

Mr. TAYLOR. I appreciate the additional remarks, and I will certainly add that to my request.

I want to follow up with the same question I am going to ask every remaining panel and have asked the two previous panels. You are the most familiar with this case. You were there.

Mr. Merletti, you were not there, but you have done all the research on it.

Has anything that any of you have seen or heard or read justified the murders of those 4 ATF agents or the wounding of 20 more by David Koresh and his followers on the morning of February 28? Is there anything that you have seen that caused those people to react in a way that was so unlawful?

Mr. BUFORD. Absolutely not.

Mr. CHOJNACKI. No, sir.

Ms. SLAUGHTER. No, sir.

Mr. MERLETTI. Absolutely not.

Mr. TAYLOR. Mr. Merletti, again, for the record, you are not an ATF agent, but you have gone in as an independent contractor to do the research on this.

Mr. MERLETTI. Yes, sir.

Mr. TAYLOR. Does it not come as a surprise to you, sir, that there can be some conflict here in what Mr. Sarabyn is saying when he says, on one hand, "I didn't know," and yet he did. I mean, let's face it a lot of people got hurt. They made the decision to go in.

There has got to be, in all of them here, in their hearts, some regret that people who were in their charge got hurt. That is human nature.

Isn't there something in the human psyche that is just called denial? It is not being fraudulent. It is just called denial. "Gosh, I wish it wouldn't have happened."

It happens to people in car wrecks. It happens to people when they see their kid fall out of a tree. "Maybe I shouldn't have let them get in that tree."

That is not criminal. It is just denial in a person's heart. Do you think that is entirely possible?

Mr. MERLETTI. Let me explain this. I do not believe at all that they led them into an ambush. They certainly did not know what Koresh had waiting for them. They wouldn't do that.

From the interviews I have had with them, I know they wouldn't do that. What happened to them, that was horrible, and I know they regret it.

I am referring to the continually evolving story about the element of surprise. That is all I am referring to.

Mr. TAYLOR. I appreciate you making that point and I hope the record will reflect that.

Additionally, I hope the record will reflect the fact that I do not think the ATF agents are being treated fairly. I really resent that this committee is talking about things way off on the periphery, that they are going out of the way.

I have one last question of you, Mr. Buford.

Yes or no, did you have any reason to believe that there was a methamphetamine lab on that compound that day? Did you have any reason to believe that?

Mr. BUFORD. I had been told that there was the possibility that it was there. Yes, I had reason to believe that there was one there.

Mr. TAYLOR. I hope the record will reflect that. Thank you very much.

Mr. MCCOLLUM. Thank you, Mr. Taylor. Mr. Zelif, you are recognized for 5 minutes.

Mr. ZELIFF. Mr. Sarabyn, were explosive flashbang devices used in the February 28 raid on the Davidian compound?

Mr. SARABYN. Yes, sir.

Mr. ZELIFF. And did you know at the time that 25 children were in the compound?

Mr. SARABYN. Yes, sir. Let me explain that answer. We had three SRT teams and it was at the point, like I said, the SRT teams were just beginning to come about. And so, we were just getting into using flashbangs. Only two of the teams were actually certified to use flashbangs. The Dallas team was not.

We knew that the women and children were on the second floor and higher up, so we put the Dallas team to clear that area because they could not use flashbangs and we did not want to endanger any children or women with that, sir.

Mr. ZELIFF. But you did use them and you knew that children were in the compound.

Mr. SARABYN. We didn't use them, just throwing them in anywhere. I think the only way that they were actually diverted, was Bill up in Koresh's armory.

Mr. ZELIFF. I am going to ask the clerk to distribute a copy of the ATF Manual, produced to the subcommittees by Treasury.

It says that, "hazard enhancers, under certain conditions, may exist that may limit or prohibit the use of flashbangs. When children are known to be in the location, more care must be taken. In-

juries that would be minor to an adult are often aggravated in young children."

What measures did you take to protect the children from the flashbangs?

Mr. BUFORD. There is a standard procedure, sir, and it is our policy, we must look into the area where you are going to deploy a diversion device. If there are any children present, you may not deploy that device.

It goes on further that we must, in fact, look inside. You can't just blindly throw one through a window. You must ensure that there are no children or, I believe the policy goes on further, elderly people who may be on medication or on some type of a—such as oxygen, or something like that.

Mr. ZELIFF. It says a fire hazard exists when using flashbangs. The room must be thoroughly checked for fires. If a flashbang lands on combustion material, laundry, newspaper, clothing, stuffed chairs, fire is not only possible but likely.

I guess my question is, and what surprises me is, that you really had a limited amount of training to use these, knowing full well that there was a certain amount of safety hazards in using them, and you went ahead and used them, anyway.

Mr. BUFORD. We had used them on numerous occasions. Not on numerous, but on several, occasions before that. One of the requirements that we have is that we take along a fire extinguisher with the team, anytime you are going to deploy those.

Mr. ZELIFF. Is that what you did?

Mr. BUFORD. Yes, sir.

Mr. ZELIFF. You took one fire extinguisher?

Mr. BUFORD. One fire extinguisher, yes, sir, with my team. The other team at the front of the building, the Houston team, which was also certified to use the devices, had a fire extinguisher, also.

Mr. ZELIFF. If Koresh had surrendered at the door, wouldn't the acknowledged lack of communications between agents have meant that the agents who were entering through windows and up ladders on the side of the compound would still be using flashbangs? Did you have a problem communicating with the other groups?

Mr. BUFORD. No, sir. We had two radios. Agent King, my coteam leader, could communicate with all of the other team leaders. He would have known immediately, and we would have still made entry into those rooms, but it would not have been necessary to deploy a flashbang.

Mr. ZELIFF. Did the tactical plan designate an agent to carry the warrants, and did that agent have in his or her possession the warrants on the day of the raid?

Mr. SARABYN. I had the warrants, sir.

Mr. ZELIFF. You, personally, did?

Mr. SARABYN. Yes, sir.

Mr. ZELIFF. OK. The ATF tactical plan called for agents to be on different sides of the Mount Carmel Center at the same time, so would it be fair to say that the SRT's did not have continuous visual contact with the other SRT's?

Mr. BUFORD. I am sorry, sir. I didn't understand that.

Mr. ZELIFF. The ATF tactical plan called for agents to be on different sides of the Mount Carmel Center at the same time. Would

it be fair to say that the SRT's did not have continuous verbal—visual contact with the other SRT's? In other words, could they see each other?

Mr. BUFORD. Verbal contact, yes. Visual contact, no, but that is only for the New Orleans team that was on the east side. The Houston and Dallas teams had full visual contact.

Mr. ZELIFF. Given that scenario, shots were fired. Did the raid plan have some type of verification signal that agents were taking incoming rounds?

Mr. BUFORD. Well, it was obvious the .50-caliber rounds were not ours, sir.

Mr. SARABYN. Additionally, as soon as I got off the truck, I went right over to the radio and I was on a command channel that, "We are taking fire. We are taking heavy fire." It went out to everybody within seconds, then the audio tapes.

Mr. ZELIFF. Isn't it true that the special agent who was first at the front door of the Mount Carmel Center told the Texas Rangers investigating the raid that the ATF dog team shot first?

Mr. SARABYN. First of all, there was a dog there in the front and we were carrying a fire extinguisher. That was the first thing we were going to use. Just do that to get the dog to go away, if not, he was going to shoot the dog, if it became offensive.

I asked the agent this week. I said, "What happened?" Because I was never clear.

He said, "I went to spray the dog and I got shot." You know, so he was using the fire extinguisher, not even his weapon, to do away with the dog. That is when he was shot.

Mr. MCCOLLUM. Mr. Zeliff, your time has expired.

Mr. ZELIFF. OK, thank you.

Mr. MCCOLLUM. Thank you, sir. We have time for Mr. Brewster's questions. We haven't even begun to get the second bell, so I will yield to you, sir.

Mr. BREWSTER. Thank you, Mr. Chairman. Do I note that three of you have counsel with you today?

Mr. SARABYN. Yes, sir.

Mr. BUFORD. Yes, sir.

Mr. CHABOT. Yes, sir.

Mr. BREWSTER. Does that mean, then, that you are either suing someone or someone is suing you over this happening?

Mr. SARABYN. Yes, sir.

Mr. BUFORD. Yes, sir.

Mr. CHABOT. Yes, sir.

Mr. BREWSTER. Are you suing the Government or is some other person that was involved in the raid suing you, or what is the status?

Mr. CHOJNACKI. We have approximately 2 billion dollars' worth of civil suits lodged against us by family and friends of the deceased Davidians.

Mr. BREWSTER. What about anybody else that was involved in the raid?

Mr. CHOJNACKI. We are being sued, Mr. Sarabyn and I, by one of the agents involved in the case, and we are participants in another civil suit against the EMT, the medical company, the Cox Publishing Co., that put out the newspaper article, and the TV sta-

tion that leaked the information to the Davidians that caused the death of our agents.

Mr. BREWSTER. OK. So you are being sued by families of the Davidians, another agent—

Mr. CHOJNACKI. Yes.

Mr. BREWSTER [continuing]. And you are suing a medical company, the TV company, and the newspaper.

Mr. CHOJNACKI. Yes, sir.

Mr. BREWSTER. And Mr. Buford.

Mr. BUFORD. I am being sued by some of the members of the families of the Davidians and I am also a party to the lawsuit against the television station and the newspaper and the ambulance service.

Mr. BREWSTER. OK. Let's see, do I understand that you two were fired after the conclusion of Mr. Merletti's investigation, is that correct?

Mr. SARABYN. Yes, sir.

Mr. CHOJNACKI. That is correct, sir.

Mr. BREWSTER. And you were reinstated by the Merit Protection Board after a review of your case with backpay.

Mr. SARABYN. Yes, sir.

Mr. CHOJNACKI. Yes, sir.

Mr. BREWSTER. So, Mr. Merletti, doesn't that pretty well exonerate them?

Mr. MERLETTI. They are no longer agents. They no longer carry weapons. They have been reduced in grade. I don't think it completely exonerates them. I don't think so, at all.

Mr. BREWSTER. But they were reinstated with backpay.

Mr. MERLETTI. That is due to the Merit System Protection Board that does not allow you to take a cut in pay.

Mr. BREWSTER. OK, one other thing. I was involved in the hearing that the Ways and Means Oversight Committee had, shortly after this occurred, there was no mention of an amphetamine lab.

I went back and reviewed that testimony just yesterday or the day before. I have not found any mention of an amphetamine lab, and that was somewhat troubling to me.

Mr. Buford, what part of the building did you think the amphetamine lab was in?

Mr. BUFORD. I didn't have a clue, sir. It was mentioned to me and, really, my major concern was on the firearms and the explosives there. I didn't really take that much of a precaution about the lab. I was just aware that there was a possibility there may be one there.

Mr. BREWSTER. I am a pharmacist by profession and have a little understanding of the way that would be manufactured. Would it not be important, from a safety standpoint, for agents to know what part of the building that lab was supposed to be in, if you are using flashbangs and other devices that can certainly cause the chemicals to explode?

Mr. BUFORD. Absolutely, sir, I agree with you 100 percent. It would be very important. That is the reason we were so protective of how we deployed the flashbangs, and that was information that we would have liked to have had, but there was no way to gather this information.

If we could have gathered that information, we certainly would have. I know. I have raided many methamphetamine labs and, in most cases, we don't know exactly where they are.

Mr. BREWSTER. Another point, you mentioned that you were outgunned there.

Mr. BUFORD. I think the group knew this bunch were not good folks, and they had a heck of a lot of weapons that you knew had been converted to fully automatic.

Mr. BREWSTER. Why was everybody in your group not carrying at least equal firepower or greater, and besides, you mentioned that someone was killed when an AK-47 bullet penetrated a vest. Would not any high-powered rifle, such as a 270, 30-06, 22-250, that travels about 3,000 feet per second, would it not penetrate a vest, as well?

Mr. BUFORD. That is correct, sir. Those rounds would all penetrate the vest. Miraculously, Agent King, who took three rounds through the chest, survived. The other agents who were killed were shot with the high-powered weapons.

The first part of your question, sir?

Mr. BREWSTER. The first part is, why didn't you guys go with at least as good a weaponry as they had?

Mr. BUFORD. Well, sir, we knew for a fact that there were children there and that there would be some of the women who would be noncombatants. And regardless of what they have, our standard issue is the 9-millimeter handgun, the 9-millimeter MP-5, and the shotgun. We did have a couple of—

Mr. BREWSTER. Are you telling me that you do not have fully automatic weapons in ATF?

Mr. BUFORD. ATF has a two-shot MP-5, that is used by our SRT's. We do not have a fully automatic weapon in our arsenal with the exception of the two-shot MP-5.

Mr. BREWSTER. Mr. Merletti, one other point with you. If you could provide me in writing the changes that have been made to make sure that nothing like this occurs again in the future?

It is my understanding in the Treasury that you can get that information for me.

Mr. MERLETTI. Sir, I could go to someone who could get it for you. Again, I investigated the case. I didn't follow up on—

Mr. BREWSTER. Maybe I misunderstood Treasury, earlier today, when they were talking with me. I thought they gave me that information.

Mr. MCCOLLUM. Mr. Brewster, your time has expired, but I think Mr. Sarabyn wanted to respond at one point, or his attorney did, to something Mr. Merletti said. We will allow you to do that, if you wish to do so.

Mr. GARDNER. Thank you, Mr. Chairman, and since I have already gone out on a limb and taken an oath, just to clarify. The Merit System Protection Board did not reinstate Mr. Chojnacki and Mr. Sarabyn. They were reinstated by Treasury, as part of the settlement agreement. I didn't want any misunderstanding. This was not an adjudicated matter. It was a settled matter.

Mr. BREWSTER. Our notes are wrong, then. It says U.S. Merit System Protection Board.

Mr. GARDNER. I have read it in a lot of papers, too, Mr. Brewster, that is why I wanted to stick my two cents in.

Mr. MCCOLLUM. I thank you very much.

We are going to be in recess, now. We are going to come back. We still have other questioners. I know it is late, but it will be 5 minutes after the last vote. Apparently, we have at least two votes. Probably, that is all it is.

If the panel can be patient with us, we don't have much longer. Thank you. We are in recess.

[Recess.]

Mr. MCCOLLUM. When we recessed a few moments ago for the vote, we did not realize that we were going to wind up with quite a debate in itself on the floor over what happens the rest of the night. I think many Members, knowing they may be here quite late voting on bills, have stayed over there to hear that debate, which has now concluded, as I observe from watching C-SPAN, which I guess is a good source, when you come back over as chairman from a committee to a committee room.

We are now in the process of beginning these hearings again. I am going to yield at this point in time to the gentleman from North Carolina, Mr. Heineman, for 5 minutes of questioning. Mr. Heineman.

Mr. HEINEMAN. Thank you, Mr. Chairman. It is a shame our colleagues on the other side of the aisle are not here, now. I kind of object that the gentleman from Mississippi characterizing us as not knowing who the good guys and the bad guys are.

We know who the good guys are and the bad guys are. In fact, I was a good guy for 38 years, and I like to think I am still a good guy.

I did get elected to Congress, and because I am in Congress, I take my job very seriously. I am not here to bury ATF or anybody else, but I am here to ferret out the 15 percent of the warts in here that Mr. Schumer mentioned some time ago, and that is why we have to ask questions. Some of them probably are repetitive. Some of them you have answered before at another hearing, but I think for the comprehensiveness of what we are doing here, you will just have to bear with us as we go through this.

Mr. Sarabyn, when Mr. Rodriguez, after leaving the compound, after his conversation with David Koresh, exited the compound and spoke to you, where were you?

Mr. SARABYN. I was in the command post.

Mr. HEINEMAN. The command post was not that house that overlooks the compound?

Mr. SARABYN. No, that was the undercover or surveillance house. He had left the compound. Went to the undercover surveillance house, which is across the street.

Mr. HEINEMAN. Right.

Mr. SARABYN. I was approximately a couple of miles away in what was the command post.

Mr. HEINEMAN. OK, now, you said approximately a couple of miles. I somewhere seemed to have read that the technical school was a good 10 miles from the compound, is that correct?

Mr. SARABYN. We didn't really realize this until after, but from the steps of the command post, you could actually see the

compound. I mean, to actually drive it, it might have been, you know, 5 or 6 miles. I don't think it was 10 miles.

Mr. HEINEMAN. Where was the raiding team?

Mr. SARABYN. They were at a staging area, which was approximately 8 miles away from the compound and probably 4 or 5 miles away from the command center.

Mr. HEINEMAN. And you had a conversation with Mr. Chojnacki relative to your conversation with undercover agent Rodriguez?

Mr. SARABYN. Yes, sir.

Mr. HEINEMAN. And you told him that the security was breached, that Koresh knew that the, as he characterized it, the ATF and the National Guard, was on their way?

Mr. SARABYN. He didn't say, "on the way," he said, "coming."

Mr. HEINEMAN. Well, coming.

Mr. SARABYN. Yes, sir.

Mr. HEINEMAN. And Mr. Chojnacki, when you received that information, can you tell us what you did?

Mr. CHOJNACKI. When I received the information from Mr. Sarabyn—one thing I would like to clarify—nobody said that security was breached. Mr. Sarabyn pointed out that he had finished talking with Agent Rodriguez and that Robert says he knows we are coming. He said, "The ATF and the National Guard were coming to get me," those kinds of comments that I took to be a repetition of the same comments that we had heard from his other preaching episodes where he preached that the ATF will be coming to get us. "The ATF is coming to get us."

Mr. HEINEMAN. Well, I think a little differently than you do about that. The fact that he told Rodriguez. He was shaking and he told Rodriguez that, "They are coming; they are coming to get us, the ATF and the National Guard." I interpreted that as—and I believe Rodriguez, although he will be here at some point to testify to that—he believed that Koresh knew that you were coming.

Mr. CHOJNACKI. I do not challenge Agent Rodriguez's perception of what he told us. I am not saying at all—

Mr. HEINEMAN. Did you believe he knew you were coming?

Mr. CHOJNACKI. Not at that time, I didn't, no, sir.

Mr. HEINEMAN. Well, who was it that said, "Let's hurry up. Let's hurry up."

Mr. CHOJNACKI. I never made a comment like that, sir.

Mr. HEINEMAN. Well, perhaps Mr. Sarabyn said that.

Mr. SARABYN. I said that in the staging area.

Mr. HEINEMAN. So apparently, you believed that the security was breached.

Mr. SARABYN. When he made those comments, he said ATF and the National Guard. I had heard ATF several times. I had never heard National Guard. I was concerned with that.

Mr. HEINEMAN. I believe it is in the book. I believe it is in Mr. Merletti's book. But then, again, you had a quarrel, 15 percent of that book, you said, was questionable.

How many SRT's were there, Mr. Chojnacki?

Mr. CHOJNACKI. Beg pardon, sir? How many were at the site or in America?

Mr. HEINEMAN. In the raiding party.

Mr. CHOJNACKI. Three.



Mr. HEINEMAN. Three SRT's.

Mr. CHOJNACKI. Yes, sir.

Mr. HEINEMAN. And totally, how many ATF people were a part of that raiding party?

Mr. CHOJNACKI. I don't know the exact number. It was somewhere between 75 and 95, something in that area.

Mr. HEINEMAN. Seventy-five and 95, that is a large raid. I think somebody said it was the largest that you engaged in?

Mr. CHOJNACKI. That is not true, sir. Someone had said that, but that is not true.

Mr. HEINEMAN. OK, and you say you had no written plan?

Mr. CHOJNACKI. We had handwritten plans, produced by the various SRT team leaders, that hadn't been collated into a typed document because we moved the raid up 1 day.

The day that they were to come into Waco, to prepare the raid plan, was eliminated because we had bumped it up a day.

Mr. HEINEMAN. Well, you had a written plan, had it been for Monday, is that correct?

Mr. MCCOLLUM. Mr. Heineman, this will be your last question. You are well over the time, unfortunately. Please answer.

Mr. CHOJNACKI. We had a raid plan, yes, sir, but it was not collated into one document as is required by the Bureau for the execution of a warrant.

Mr. HEINEMAN. That is the National Response Plan?

Mr. CHOJNACKI. No, sir. That was not the raid plan. The National Response Plan was a plan for the use of multidivision resources for a critical incident, and it was an instruction to provide an administrative plan. How you ran your command post. Who did this, who did that. Not the tactical plan, but the administrative plan.

That particular requirement was not in a signed order at that particular time. When we started using that guideline, we were using it as a test. Each division had gotten a copy of the preliminary order for comment. We thought we would try to organize our program to parallel those requirements so that we could effectively comment or suggest alternative recommendations to the plan.

While we were at Waco, that plan was signed off by the Director or the Assistant Director and became a formal ATF order, but we had no knowledge of that at that time.

Mr. MCCOLLUM. Mr. Heineman, your time is up.

Mr. HEINEMAN. I yield back my time.

Mr. MCCOLLUM. Mr. Shadegg, you are recognized for 5 minutes.

Mr. SHADEGG. Thank you, Mr. Chairman. Let me begin by just making a comment about something that bothers me in the comments that have been made today.

Mr. Schumer, at the start of this panel, made a major point, and in his great, flamboyant way, said he really objected, strenuously and vehemently objected, to the fact that there was repetition over and over and over of the fact that there was, in fact, little evidence whatsoever to support a methamphetamine drug lab there, and therefore, very little evidence to support the claim of a drug nexus.

Well, I think there is indeed very little evidence of that. And his point was, it really didn't matter because you could have gotten this Army equipment even without a drug nexus.

Well, I think the evidence shows there was virtually no credible evidence that there was a current, active methamphetamine lab, and I think that the kind of deception which I see in this record of the Army on that issue deserves repetition and deserves to be heard.

But, there is another point that goes on that bothers me. My colleague on the other side tonight, Mr. Taylor, asks and says he is going to ask over and over of this panel and of every panel in the future and of the last two panels, if anyone of you gentlemen is aware of anything that you have heard in the record which justifies by Mr. Koresh and his followers the murder of four BATF agents on February 28.

Well, let me tell you. I don't know an American who believes that Mr. Koresh and his followers were justified in murdering four BATF agents. It is a tragedy. It is an outrage, but nobody on this side of the aisle, nobody on that side of the aisle, and nobody in America believes that this hearing is about whether or not David Koresh was justified.

You are never, ever justified, and I am a former assistant attorney general. I devoted 8 years to the fight against crime. It matters to me, deeply. My father was a deputy sheriff. He was involved in the fight against crime. I have his service revolver and his badge.

The notion that this hearing is about whether or not David Koresh was justified in murdering four BATF agents, or in firing, or in firing the way he did or in responding the way he did, is dead wrong.

But, there is, in fact, a serious oversight function to be conducted here and you deserve to be asked serious questions. It is a tragedy that all this happened. It is a tragedy that you have to be here.

It is a tragedy for me to hear, as Mr. Brewster brought out, that you are all deeply involved in litigation.

I used to work with assistant attorneys general, who got sued doing their jobs. My heart goes out to you over the fact that you are being sued over doing what you thought was your jobs because I have to believe that each of you at least thought at the time you were acting in good faith.

But, there is a function to be asked here. There are questions to which the American people deserve answers.

One that troubles me and it troubles me over and over again goes to the question of intelligence.

Mr. Chojnacki, as I understand it, you were Mr. Sarabyn's supervisor for this raid, is that right?

Mr. CHOJNACKI. That is correct, yes, sir.

Mr. SHADEGG. Yesterday, Mr. Sarabyn acknowledged and Agent Aguilera acknowledged that, in fact, an offer was made in Mr. McMann's home by Mr. Koresh, the despicable human being that he was, for Agent Aguilera and the agent with him to come to the compound and examine the weapons. If they were there, asking questions about those weapons, Mr. McMann called Mr. Koresh without Agent Aguilera's knowledge and said, you know, "Gee, these guys are talking to me." Koresh said, "Come and look at them."

Mr. Sarabyn said he never once took up that offer. He didn't take it up all the way to the day of the hearing [sic]. I can't understand that.

Mr. Sarabyn said they didn't take it up. Mr. Chojnacki, were you aware that there was a standing offer by Mr. Koresh to let an agent go into the compound and look at those weapons? And if so, why wasn't that offer taken up?

Mr. CHOJNACKI. I was aware, and am aware, that at the initiation of the investigation, David Koresh made the offer for Agent Aguilera to come out to his place to look at the weapons.

Now, at that particular point in time, the weapons in question were completely legal firearms that were purchased from Mr. McMann, for which David Koresh—

Mr. SHADEGG. Well, how did you know they were completely legal at that point in time?

Mr. CHOJNACKI. At the time they were purchased, they were title I firearms that were being transferred from a licensed firearms dealer to an individual.

Mr. SHADEGG. Well, the evidence you put into the affidavit says that by then, you had reason to believe they had been converted.

Mr. CHOJNACKI. Some were.

Mr. SHADEGG. And were now fully automatic and were dangerous. Why wouldn't you want to go take a look at them?

Mr. CHOJNACKI. I don't think any reasonable person would expect that he would show us those firearms. He would show us the ones that hadn't been converted.

Mr. SHADEGG. Well, the truth is, we don't know whether he would have shown you, or whether he would have let you into the compound, or whether he would have let you inspect every inch of the compound, or whether he would have let Aguilera and the other assistant go in with him, and shown you anything or everything. We don't know that today because no one bothered to call him back or to have Mr. McMann call him back and say, "Do you remember that questioning we had? You have made an offer to let them come in and look, they would like to come in and look."

Mr. MCCOLLUM. Mr. Shadegg, your time is up.

Mr. SHADEGG. I am mystified and will be always mystified by that.

Mr. CHOJNACKI. May I respond to that, sir?

Mr. MCCOLLUM. You may respond, but his time is up. I just have to cut it off somewhere, but you can respond.

Mr. CHOJNACKI. Thank you, sir. At that particular point in time, I believe Mr. Aguilera had interviewed Ms. Sparks. Realized that when she was allowed to come to the compound to conduct her investigative activities, she was completely shadowed. She was only allowed to visit in a public access area at the very front of the building. She had no access to the sleeping quarters or anything else.

At another time, when family members had come to visit a family member who was in the compound, they were restricted to the same common staged area where they couldn't get past the foyer of that location.

Now, I don't know if that had any impact on Mr. Aguilera's decision to not go, but I do believe that most of us in that circumstance

would have found it a situation where we wouldn't want to tip our hand as to what we were after.

At that particular point in time, Mr. Aguilera was trying to determine why the appropriate paperwork hadn't been filled out. That was a problem for the dealer, not for Mr. Koresh. That decision was his to make at the time, sir.

Mr. SHADEGG. My time for questioning may be over, but we don't know whether all those people left safely.

Mr. MCCOLLUM. We have to have order.

Mr. SHADEGG. We do not know whether or not he would have been shown any more than that because you didn't try.

Mr. MCCOLLUM. Mr. Shadegg, your time is up. I am going to go now to Mrs. Thurman. You are recognized.

Mrs. THURMAN. Mr. Chairman, first of all, I would like to have some documents, the Department of the Treasury, a telecommunications message. There were some questions about the flashbangs that I think Mr. Chojnacki had talked about—how they had gotten the authorization and we in fact have the documents that show what you went through to get that OK to use those. So, if I could, I would like to submit these for the record.

Mr. MCCOLLUM. Without objection.

[The documents follow:]



DEPARTMENT OF THE TREASURY  
BUREAU OF CUSTOMS AND BORDER PROTECTION  
15355 Vantage Parkway West, Suite 210  
Houston, TX 77032-1965

February 5, 1993

LE:TX:HA:CDW  
3310

MEMORANDUM TO: Chief, Special Operations Division

FROM: Special Agent in Charge [redacted]  
Houston Field Division

SUBJECT: Request for Authorization to Use  
Diversionary Devices for SRT Operation

It is requested that authorization be granted for the use of diversionary devices during the execution of a Federal Search Warrant by the Houston and New Orleans Special Response Teams. The devices will not be used to make entry, but will be used for safety purposes while clearing the building if the situation dictates. Information concerning the operation is provided as follows:

DATE OF OPERATION: MARCH 1, 1993 (approximately)

LOCATION: Route 7, Box 471B, Waco, Texas

INVESTIGATION NO.: 53110-92-1065 x

SUBJECT: Vernon Wayne Howell, aka David Koresh, et al.

BACKGROUND:

Vernon Howell, W/M, DOB 081759, is the leader of a religious cult known as the Branch Davidian Seventh-Day Adventists. Howell and his followers (which number approximately 75 to 80 men, women, and children) reside in an expansive structure located on 77 acres of land; address Route 7, Box 471 B, Waco, McLennan County, Texas.

Information has been developed during this investigation which has identified Howell as a mentally deranged individual who believes himself to be the reincarnated "Jesus Christ." He controls his followers with the assistance of approximately eight close male associates through means of fear and intimidation as part of a "brain washing" process. Howell has a history of violence. In 1988, he was tried for attempted murder along with seven associates; however, they were all acquitted. Within the past year, Howell and his

Request for Authorization to Use  
 Diversionary Devices for SRT Operation

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followers have acquired approximately 100 firearms, many of which are believed to have been assembled from purchased parts. The firearms include 9 MM pistols, AK-47 type assault rifles, and AR-15 assault rifles. Some of the rifles are reported to be modified as machineguns. They have also acquired components and chemicals for explosives to manufacture hand grenades. Large quantities of ammunition have also been acquired.

The cult members have regular firearms training in order to defend their property. Howell has prophesied, "authorities" will attempt to take their children and that they will resist with their firearms.

The quarters for the women and children are segregated from the men's living areas. The children are not permitted in the men's area. The Dallas SRT will be responsible for securing the areas assigned to the women and children and will not use diversionary devices.

The Houston and New Orleans SRT's will be responsible for securing the rest of the complex. No children, handicapped, or elderly persons are expected to be in those areas. However, prior to the use of any diversionary device, visual inspection will be made of threat areas in compliance with ATF directives.

There are no indications of explosives or flammable materials in the area to be secured by the Houston team. There may be some in the area to be cleared by the New Orleans team. The devices will not be used in the area identified with explosives and/or flammable materials.

OPERATIONAL PLAN:

The Houston, New Orleans, and Dallas SRT's will be exclusively responsible for entry of the location. Other ATF personnel assigned to those three divisions will be responsible for the perimeter.

Phillip J. Chojnacki



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
515 Sam Houston Parkway E., Suite 400  
Houston, Texas 77032-1965

*Pls prepare  
Teletype*

LE:TX:HR:JHW  
3310

MEMORANDUM TO: Chief, Special operations Division

FROM: Special Agent in Charge  
Houston Field Division

SUBJECT: Request for Authorization to Use  
Diversionary Devices for SRI operation

It is requested that authorization be granted for the use of diversionary devices during the execution of a Federal Search Warrant by the Houston Special Response Teams (SRT). The devices will not be used to make entry to the building. However, if necessary, they will be used for safety purposes to clear the building. The following information concerning the operation is provided:

DATE OF OPERATION: February 4, 1993

LOCATION: 116 Woolworth Street, Houston, Texas

INVESTIGATING NO.: 53199 93 0011 P

SUSPECT: Guadalupe Valdez Jr., aka Lupe Valdez.

BACKGROUND:

Guadalupe Valdez, W/M, DOB: 01-01-39, is a member of the "Texas Syndicate", a notorious organized prison gang group. Valdez lives in a night club, that has been converted into a residence. This residence is barricaded from the inside. The outside doors and windows have burglar bars. Valdez, also, has re-enforced the windows with 4" plywood.

Valdez is paranoid about being robbed of his narcotics from street gangs. Valdez has fortified his house from police raids. Valdez is always armed with a .45 caliber

*Approved  
15.07 NUT  
US GPO*

(X)

Chief, Special Operations Division

-2-

pistol, or a 9mm pistol. Valdez carries his weapon in his waistband when ever he answers the door. Because of Valdez's addiction and trafficking of cocaine, he is considered to be very dangerous.

Valdez is known to house other "Texas Syndicate" members who comes to Houston, Texas after they are released from the Texas Department of Corrections.

No children, handicapped, or elderly persons are inside this location. As required by ATF directives, prior to the use of any diversionary devices, visual inspection will be made of all threat areas.

Diversionary devices will not be used in any area where explosives and/or flammable materials are noticed or located.

OPERATIONAL PLAN:

The Houston SRT will be exclusively responsible for entry of the location. Other ATF personnel and local Police Officers will be responsible for the perimeter.

*Dannie A. Carter for*  
Phillip J. Chojnacki

Approved  
*[Signature]*  
SOB  
2/4/93 *Chuf*

Per ASAC Donnie Carter  
at 9:30 p.m on 2/4/93  
Device not used

⊗



MEMORANDUM 04-04-06 . at 9:24 AM PAGE 1

LOCATION INFORMATION		ITEM DESCRIPTION	REFERENCE NUMBERS	DATE STAMP NUMBER	OLD DATE STAMP
2	1	183 Memorandum - "Not Dated", To: Chief, Special Operations Division, From: SAC, Houston Field Division, Subject: "Request for Authorization to Use Diversionsary Devices for SRI Operations"			ATP-1022-1
4	2	363 Memorandum - 02/05/98, To: Chief, Special Operations Division, From: SAC, Houston Field Division, Subject: "Request for Authorization to Use Diversionsary Devices for SRI Operations"	008-15-003216		WRT-1350-1
6	2	182 Memorandum - "Not Dated", To: Chief, Special Operations Division, From: SAC, Houston Field Division, Subject: "Request for Authorization to the Diversionsary Devices for SRI Operations"			WRT-1155
6	2	110 Document - "Diversionsary Devices Users Course"	009127-009534		WRT-1155
7	2	137 Memorandum - From the In-cell RE: Use of diversionsary devices	007661-007662		

Mrs. THURMAN. Mr. Buford, yesterday we had heard from Kiri Jewell, one of the Davidians that was there from when she was, I guess, 6 to 10. And she had talked to us about the suicide issues, which I think you know something about. It is my understanding that she actually came to Waco prior to the raid.

I don't know if anybody up there can corroborate that, but evidently they talked to agents. Do any of you know about that and what information she gave? Maybe not just Mr. Buford, but anybody else?

Mr. BUFORD. I was aware of that situation prior to the raid, but I never interviewed her and never saw her at Waco.

Mrs. THURMAN. Mr. Sarabyn.

Mr. SARABYN. Are you talking about interviewing her before the raid?

Mrs. THURMAN. Right.

Mr. SARABYN. The State's Attorney was going to issue an arrest warrant for rape and she and her father flew to Waco and she was interviewed. And with the State's attorney, she got up to the point of the hotel room and she couldn't go on. And so, otherwise there would have been a State arrest warrant.

Mrs. THURMAN. So you had awareness of what you thought was going on in the compound.

Mr. SARABYN. Oh, undoubtedly, from several people, yes, ma'am.

Mrs. THURMAN. OK, and then, of course, Mr. Buford, your past experience with the issue in Arkansas kind of gave you that same feeling of this whole idea of what might happen. Is that it?

Mr. BUFORD. Yes, ma'am.

Mrs. THURMAN. OK. Mr. Buford, I have never been in a situation that you have been in, nor any of the others at this table, and I commend you for what you have done.

I want to know—I mean, I get excited just having to give a speech sometimes. I mean, I am not talking about going in to do a raid. Can you give this panel an idea of what the emotion is and what is going on, what you going through at that time, knowing that you are dealing with children and women? What you may come up against? The life and safety of your agents, your responsibility?

I mean, I can't even imagine that. Can you give this panel this human element of what that morning must have been like?

Mr. BUFORD. The morning was very tense, as it generally is prior to a raid, but there was a heightened sense of the possibility of danger because of the newspaper reports that had been put out.

Mrs. THURMAN. What in that, particularly, might have heightened it?

Mr. BUFORD. Well, we felt that the fact that Mr. Koresh's liveliness—I can't think of the word—but that he was finally being revealed, was going to make him more hyper, make him more active, and probably put him in a heightened sense of alert, and that concerned me.

I was concerned at the time when we were in the staging area and getting ready to go on the raid. When Mr. Sarabyn came in and he made the statement that, "They know we are coming, we need to hurry up." I don't think he takes exception to the fact that I realized that was said.

I asked him certain questions. I said, "Well, what is going on?"

The bottom line, in order to shorten this, is there were no guns present. The men and women, I felt were in the chapel area. Part of the raid depended on the men being separated from the firearms, and if they were in the chapel, they were in the firearms.

Rather than get my people together in a hurry, I told them to do it as quickly as possible, but I wanted them to make sure they had all of their equipment. That all of their radios worked.

I was very concerned for their safety. I didn't want them to go into any situation, but especially this one, where they have hurried and not got something done.

I felt very, very responsible for these young men. When we loaded into the trailers, again, I looked around and I remember looking at Rob Williams, a young man out of my Little Rock office. This was the day before his 27th birthday.

He was looking over there with a big grin on his face, giving me the thumb's up. I remember thinking, "Get serious, Rob, get serious. This is serious business."

I was very concerned, as we exited the trailers, when I heard the gunfire at the front because I knew that was not our guns being fired. When I saw the agents going down, I actually wished it was me instead of them because I was responsible for them.

There is a certain—and I hate to use this term, because I don't want to sound like I am creating a Rambo-type image here—but there is a certain rush involved with a dangerous situation, and that adrenaline flow gets going and you are going to do what your mission is. Our mission was to go to the east side of that building and go up.

I have asked myself many times, why didn't I just stop when I heard the gunfire? But my job—the job of our team—was to ensure that no one inside that compound could get into that arms room to get additional weapons and more handgrenades to use against our agents.

It was vital for us to complete our part of the mission, because we didn't know that they hadn't made entry at the front and were depending on us to do our job.

In hindsight, since they didn't get in the front I maybe could have saved the lives of some of our agents, and that is something I have to live with—and I am willing to do that, and I do that.

It is a terrible responsibility to have the lives of people in your hands and then to loose them. I don't know whether I can explain that.

Mrs. THURMAN. Thank you.

Mr. MCCOLLUM. Without objection, the gentlelady is given an additional 5 minutes. The chairman will have an additional 5 minutes reserved. This line of questioning, obviously, is pursued slightly beyond the time limit. You may proceed.

Mrs. THURMAN. Thank you. Mr. Merletti, first of all, in one of the statements earlier by Mr. Sarabyn or somebody, and I think also in the report, the issue of the element of surprise has been talked about.

However, there has also been the issue of speed. So it seemed to me there was kind of a two-pronged test. In the report itself, I think that it talks about certain questions that the group had put

together that they would ask. Which is, I guess, what he carried through with.

I want to give you an opportunity, since you were the person in charge of getting this done, an opportunity to finish whatever it is that has not been started or finished today.

But I also would like, since I believe over the years we will probably see more reports, you to respond to the human element that can never reach a report like this, of not being there and on the scene, that we all should be cognizant of.

Mr. MERLETTI. Yes, and let me begin by first recognizing the many acts of bravery and heroism of the men and women of ATF that day in Waco.

I wish I had been able to tell all of their stories, every one of them. I would like to thank the ATF line agents for stepping up the way they did. It was not easy for them to come and tell the truth when they realized that they were telling some stories that involved their supervisors and may come back to haunt them.

There are a lot of people I have to thank. I want to thank the blue ribbon review panel that guided this review along with me, and that is the Pulitzer prizewinner Ed Gothman; former Watergate prosecutor Mr. Ruth; and Chief Willie Williams. We met with them routinely. They guided our investigation and approved of everything in here.

I also want to thank the six tactical experts who we relied on heavily, and they did contain their report in here also. And again, all these people—I do want for the record to say again—all agree with what is in the book.

I want to thank the other 17 investigators that worked numerous hours everyday. This was not a pleasant task. Sometimes getting the truth is not pleasant. This was not pleasant for any of us. None of us really wanted to do this.

We are proud of the work product that we put out. We feel that it will set the standard of investigative inquiries. When I look back at the hours that we worked and all the travel that we did and reliving with a lot of the line agents—members of the SRT—what they went through that day, I wonder, was this worth it?

One of the young men that was killed that Mr. Buford just spoke about, Rob Williams, his father is a Secret Service agent that I work with on occasion. About 2 months after we put the book out, Tim Williams called me and said, "I want to thank you for telling the truth, what happened to my son the day he died." That made it worth it.

Mr. MCCOLLUM. Thank you, Mrs. Thurman.

Mr. Bryant, I believe you have not had a chance to ask questions. You are given 5 minutes, if you wish.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman. Mr. Sarabyn, who on the day of the raid actually had the task of carrying forward the affidavits for arrest?

Mr. SARABYN. Who carried the warrants? I did.

Mr. BRYANT of Tennessee. Where were you located?

Mr. SARABYN. In the front of the first vehicle.

Mr. BRYANT of Tennessee. Did you go to the door?

Mr. SARABYN. I was going to the door. I never got there.

Mr. BRYANT of Tennessee. Did other officers precede you to the door?

Mr. SARABYN. Yes, sir.

Mr. BRYANT of Tennessee. How far back were you from the door when whatever happened stopped you?

Mr. SARABYN. Seventy-five feet, 100 feet.

Mr. BRYANT of Tennessee. What was the job of the people who preceded you, if they didn't have the warrant?

Mr. SARABYN. They had to deal with making entry into the place. There were some dogs that were out front. They had a fire extinguisher to spray, so that they wouldn't get in the way.

They were to make entry and as soon as they were in, I would come in after them with the warrant.

Mr. BRYANT of Tennessee. You know, I know these have been long hearings today and I appreciate all of you being here. But I do understand, now for the first time, that you did not intend to knock on that door and hope someone would come and you could serve the warrant. You planned to kick the door down?

Mr. SARABYN. They always announce when they are going through.

Mr. BRYANT of Tennessee. OK. But you had warrants to serve and you were back 75 feet?

Mr. SARABYN. Yes, sir.

Mr. BRYANT of Tennessee. OK. Do you know what happened to those warrants?

Mr. SARABYN. What happened to the warrants?

Mr. BRYANT of Tennessee. Yes, sir.

Mr. SARABYN. They probably got shot up. They were sitting on the seat of the truck, and then, they got new ones after that.

Mr. BRYANT of Tennessee. OK. Let me ask each one of you for a yes or no answer, if you can give it to me, because this is a critical issue on the element of surprise. It seems to me when you are doing this and you lose the element of surprise, one of two things is going to happen. You are either going to go and the people are going to cooperate with you and accept the warrant or they are going to shoot at you.

Now, very clearly, the element of surprise was lost, whether or not you all admit it or not, or whatever. But my question is, was there an order, an operating order that day, that said if the element of surprise was lost that you were to abort the raid? Yes or no? Was there or was there not?

Mr. CHOJNACKI. The operating order, sir, related to safety. And the issue was, if we could execute the warrant safely, we were to go. If we could not execute the warrant safely, we were to abort.

Mr. BRYANT of Tennessee. And Mr. Sarabyn.

Mr. SARABYN. I received no order not to go, if we lost the element of surprise.

Mr. BRYANT of Tennessee. Mr. Buford.

Mr. BUFORD. I knew nothing of that order.

Mr. BRYANT of Tennessee. Sir.

Mr. MERLETTI. The investigation shows that Treasury spoke with Director Higgins on the 26th and Director Higgins told Treasury that the raid would not proceed unless they had the element of surprise. That is what the investigation has turned up.

Mr. BRYANT of Tennessee. And that comes from——

Mr. MERLETTI. No, no, what happened after Mr. Higgins, who he told, you will have to ask him.

Mr. BRYANT of Tennessee. OK, but as far as you can tell, that originated from then-Director Higgins?

Mr. MERLETTI. Yes.

Mr. BRYANT of Tennessee. Thank you. We will have him, later on.

Mr. Buford, I know there were many rooms within the compound. Did you agents, were you all equipped with CS canisters to use as they went in these various rooms?

Mr. BUFORD. No, sir. We had no gas capabilities whatsoever. We carried no gas. We intended on using no gas whatsoever.

Mr. BRYANT of Tennessee. Is there a reason you didn't carry CS gas?

Mr. BUFORD. Yes, sir. We weren't authorized to use it.

Mr. BRYANT of Tennessee. How would you have been authorized to use it?

Mr. BUFORD. We would have had to receive the training and, even yet in ATF, we are not allowed to use any type of gas.

Mr. BRYANT of Tennessee. Was that ever considered?

Mr. BUFORD. It wasn't an option that we had because we didn't have the authority or the training to use gas.

Mr. BRYANT of Tennessee. Mr. Chojnacki, did you, after the first day or so, ever cede or concede to the FBI taking over charge of the area?

Mr. CHOJNACKI. Yes, sir.

Mr. BRYANT of Tennessee. Was that voluntary?

Mr. CHOJNACKI. On my part, I thought it was the right thing to do. When I called headquarters and advised them that we were under fire, I had no idea how many people were injured and we needed assistance. I felt that if I started a siege, surrounded the place with ATF resources, and any of those people did anything, say, pretending to come out and surrender and then took some kind of action that caused one of my people to defend themselves, it would be considered an assassination potentially by the public or by some critics. So, I felt we had to bring in an agency that had the authority to conduct that kind of action, the expertise to do it, and couldn't be considered an attachment of the ATF.

So I asked headquarters to consider bringing in the HRT at the same time they were making that decision independently, and they went ahead and did it.

Mr. BRYANT of Tennessee. Thank you, gentlemen.

Mr. MCCOLLUM. Thank you, Mr. Bryant. Mr. Souder.

Mr. SOUDER. Thank you, Mr. Chairman. I want to make a brief comment. And that is, I have been carefully listening—my days to question are coming—I am one who has gone back and forth, but listening very intently as we have gone through the different panels. I did not come in with a particular agenda. I am interested in the truth.

I must say that, I hope, tomorrow morning, we don't go through what we have gone through the last two mornings. I hope we don't get more lectures about bias. I think it has been useful from both sides, both drawing out the difficulties that you encounter in raids

and your dedication to your service. At the same time, we have an obligation. If we don't ask tough questions, and this hearing is viewed by many people around the country—or grave questions—a whitewash, none of us are going to be in good shape, and I hope that is understood by people watching and those of you here. That the questions have to be asked. They have to be asked, toughly.

With that, I yield to the chairman, Mr. McCollum.

Mr. MCCOLLUM. Thank you very much for yielding the balance of your time, Mr. Souder.

I want to announce to everybody, so we know the ground rules here, that I have accumulated the balance of Mr. Souder's time. I also have, because of the unanimous consent of two times earlier today, an additional 10 minutes, 5 each from Mr. Conyers' extended time, and from that of Mrs. Thurman.

I intend to use most of that to ask a few questions myself, this evening, of you. I may yield to Mr. Zelif, for a moment, as well. And I believe we will have concluded all of the questions from the panel this evening, and I hope we can wrap this up.

We may have an intervening vote, but we will try.

First of all, gentlemen, what I am most interested in getting at is something going back to the very beginning of your testimony today, that this particular segment of the hearings was really designed to get at, and that is the planning of the raid itself, though we have talked a lot tonight about the raid.

I am curious. I have heard you, Mr. Buford, state some things about it, and a little bit also from the other primary witnesses here. But, what was the imperative? Let's put it this way. Why was it so important to get on with this raid instead of waiting? Instead of February 28, or March 1 even—2 weeks, 6 weeks? What would have been wrong with June 5?

What risk was posed to the community? I heard you mention one thing, I think, Mr. Buford, earlier, but what went through all your minds? What was involved in making it necessary to conduct the raid at the time you did it?

I don't mean what happened that day or the newspaper article, necessarily, that was being printed that day. But in the general, broad time scope of things, what made that happen?

I guess I should ask you that, Mr. Chojnacki, since you were the principal leader of this, but I know Mr. Buford and Mr. Sarabyn, had a part in the plan.

Mr. CHOJNACKI. I believe at that particular point in time, we were reaching what we felt was the natural conclusion to that phase of the investigation. We had developed sufficient probable cause for the search and arrest warrants. We felt an obligation to take action in that instance, on the contrary side, against the concept of waiting additional time.

We had the concerns for things that were going on inside the compound that were really not an issue for the ATF, but an issue for the public and people in general, at least from my perspective.

There was no way that we would have any control or knowledge as to what Mr. Koresh intended to do with those firearms, other than what we had heard from the people that we had talked to and the kinds of information that we had, while they may have seemed like wild stories, we know from recent history, occasionally groups

like that do go out and commit some sort of crime with those kinds of firearms, either to gain financial resources or to make a point of some kind.

We couldn't sit still and let that kind of thing take place.

Mr. MCCOLLUM. What imminent danger to the community were you really afraid of, in this case?

I heard Mr. Buford say something about somebody might be murdered at a McDonald's. Could you explain that, either one of you? Where did you hear that?

What were you hearing and from whom were you hearing it, that there might be an actual danger to the community from the group that was in that compound at Waco, if you didn't go ahead and move when you moved?

Mr. Buford, can you explain McDonald's? You mentioned that earlier.

Mr. BUFORD. Yes, sir. I was not aware of that until after the raid, because Kathy Schroeder, who was one of the Davidians, I believe in a statement to the Texas Rangers, talked about at least a discussion, if not a plot, to arm all of the "mighty men," as he called them, in the compound and, in order to bring about this Armageddon that he had prophesied, go into Waco and, I believe McDonald's is the restaurant that he talked about, to kill everyone in the McDonald's and come back to the compound and wait for law enforcement to come after them so that he could have his Armageddon.

Mr. MCCOLLUM. But as far as before the raid was concerned, I haven't seen any evidence in what I have looked at—and that is why I am asking you tonight, gentlemen—of any specific indications you had that Mr. Koresh or the group in that compound was posing an imminent danger to the local community around them. Mr. Sarabyn?

Mr. SARABYN. I think when Ms. Sparks was interviewed at one time, she had a conversation with Koresh and he made the statement of, you know, "The L.A. riots aren't nothing." Or something, I can't remember the actual text of it, but it was something that, "You ain't seen anything, yet," or "The violence or whatever in L.A."

Mr. MCCOLLUM. Is that it? Anything else?

Mr. TAYLOR. Will the gentleman yield?

Mr. MCCOLLUM. I am not going to yield, right now. I want to hear the answers from the witnesses.

Mr. SARABYN. I think, as far as the investigation concluded, you know, the fact that we had enough probable cause.

Mr. MCCOLLUM. I know, but I meant, was there anything else that was given to you in the way of testimony, observations, intelligence, that told you that there was an imminent danger to the community, if you waited?

In other words, that Koresh was going to go out and blow up the town or hurt anybody or do anything that caused you to feel you needed to protect the community, to actually go in from that standpoint, at the time you did, as opposed to just carrying out a search warrant and trying to get to the bottom of the weapons investigation you were after? Which you had a legitimate reason to do.



Mr. SARABYN. You are talking just outside, not what was going on within the compound?

Mr. MCCOLLUM. No, not what was going on within the compound. Outside.

Mr. SARABYN. That was the only thing that I was aware of, that statement.

Mr. BUFORD. There was, sir, the fact that there were violations of Federal law, that we had plenty of information that there were Federal laws being violated, and I think we would be negligent—

Mr. MCCOLLUM. You are talking about the arms laws, the fire-arms laws.

Mr. BUFORD. Yes.

Mr. MCCOLLUM. All right, I understand that. And I understand you thought you had the evidence and you got a warrant and all of that. I wasn't asking that.

What I am really getting at is something that a lot of people have questioned very seriously, even though I have heard you say some things about it tonight to the contrary, that David Koresh could have been captured outside the town, or outside the compound, I should say, at some point, if you had waited.

That even though you had some indication he might not come out again right at that period of time, there has been a lot of testimony and a lot in the record about several times that he did come out, in January and February. We have logbooks that show that somebody in your house out there watched that and watched him come out.

If you had waited 6 weeks or 6 months, even, one would assume you would have captured him. Now, you said earlier, one of you, that I recall, that you didn't think that capturing David Koresh was necessarily a good idea.

Was that a conclusion the planners made? That you really did not want to arrest him outside the compound? That that would have hurt your chances of success, or not? Mr. Sarabyn.

Mr. SARABYN. Sir, the goal of the thing was to execute a search warrant. Arresting Koresh was just a side thing.

Mr. MCCOLLUM. But if I could interrupt you, taking Koresh out would have cut the head of the lion off, so to speak, according to those who would argue to the contrary, and as a result of that, probably made your job a lot easier inside and the danger to your agents going in there and the loss of life, a lot less. He was the leader, was he not?

Mr. SARABYN. We discussed that extensively, and we didn't know, would he become a martyr that they always said was coming and now the Government has got him and they would potentially go into a mass suicide there? Or try to—

Mr. MCCOLLUM. Well, then, did you decide not to do it? Did you decide not arresting him was the bottom line?

I haven't heard anybody here tonight say that at some point along the way in planning this raid, you made a conscious decision you did not want to arrest him outside the compound. Your objective was to go ahead and do the search, and that is what I am getting at.

If you had had him out there, if you knew he was going to come out that week and go around town, would you still not have waited

and arrested him outside the compound because you wanted to go in and get him, and get the search?

Mr. BUFORD. Sir, up until the time that we arrived at Fort Hood, we as raid planners were contemplating any way possible, and were looking at any way possible that we might still be able to arrest Mr. Koresh, or at that time, we didn't have an arrest warrant, at least to detain him off of the compound.

There were a couple of things that we had to consider, though, and I agree with you. There is a very good possibility that had we been able to detain him off the compound, that we may have cut the head off the snake.

But on the other hand, we still had 100-plus armed individuals inside that compound that we would have to move on, almost immediately, to prevent the destruction of any evidence that might be there.

To have 100 agents sitting around for 6 weeks, 8 weeks, or 2 months, on the maybe-the-fact that he might come out, was not logically sound.

Mr. MCCOLLUM. But he had come out within a week, according to what we have got in evidence, so far, a week before your raid.

Let me ask you this question. Why did you fear that the Davidians really would destroy the evidence? Considering the amount of weapons that you thought were in there and the difficulty of destroying large armaments like this?

Mr. BUFORD. Well, it is very simple to destroy those. In fact, during the 3 days that we were in a siege at the CSA compound, they destroyed numerous firearms. A cutting torch can do wonders to them. You can disarm the handgrenades.

Mr. MCCOLLUM. I just want to know that.

Let me ask another quick question. Why didn't you consider another ruse to get David Koresh out?

I understand from the evidence that we have gotten, at least from the Treasury report book, and I don't think any of you have talked about it today, that Joyce Sparks was asked to be a ploy at one point, and she refused to do that.

There were others who have testified before us, religious leaders and all, who suggested things that they thought would have worked to get him out of that compound.

Was there no other consideration of another ruse besides Joyce Sparks? Mr. Sarabyn or Mr. Buford. Mr. Sarabyn.

Mr. SARABYN. To my knowledge, we considered McMann, the dealer; getting a grand jury subpoena; and, were there any others?

Mr. BUFORD. Staging a car wreck with the schoolbus. Stating that some of the children were injured, hoping that he might come out.

Not staging it, but at least stating that that had happened.

Mr. MCCOLLUM. Well, why didn't you do one of those?

Mr. BUFORD. We weren't assured that that would work, and by doing so, if there wasn't a wreck there, and we had—

Mr. MCCOLLUM. But you had other options. That was just one of them.

Let me ask another question.

Mr. BUFORD. There were several of them.

Mr. MCCOLLUM. Why did you plan to make a daytime raid? Why was it important to make a daytime raid, at 10 a.m., in the morning?

Most people have said, you can't have a surprise raid, or at least it is not nearly as likely to be a surprise, if it is a daytime raid, especially with all the logistics problems you have described and the open territory and everything.

Why a daytime raid?

Mr. BUFORD. We discussed that at length in making a decision to go at 10 o'clock. We discussed the possibility of moving in, early in the morning, while it was still dark, and getting into a position where we could move as quickly as possible.

The reason that 10 o'clock was decided on, there were a couple of factors. Our information was that when the men had been issued their weapons, they were kept under their beds, and that they were kept unloaded except for a loaded magazine being close at hand.

The routine in the church, for lack of a better term, was that from 9 to 10 o'clock in the morning, there was a Bible study. At times, Koresh would preach. At other times, it would merely be a Bible study, which the people would do inside their own living quarters.

Prior to that, there was not a lot of activity on the outside of the compound. Our desire was to wait until 10 o'clock so that there would be the men going to work, or at least doing some activity that would take them away from their rooms where the firearms were.

What we would hope to do would be to find the men in a place other than their bedrooms because that is where we understood the firearms were kept, at least the ones that had been issued to them.

So by separating them from those guns, and that wouldn't happen until 10 o'clock, for the most part—and then, there was the factor of having enough light to be able to see. The interior of the compound, as I was told by Davidians who had lived there, would be quite dark and that it would be important for us to be able to see, simply because a figure moving down the hall, we wanted to make sure we could determine——

Mr. MCCOLLUM. Well, I can understand the light and I can understand a lot of the explanation. I think we will see, in the next day or two in hearings, that a lot of the intelligence you had about inside the compound was not very good.

I still have a minute or two left here, and I want to yield a little bit of time to the gentleman, Mr. Zeliff, if you would, please. Mr. Zeliff.

Mr. ZELIFF. A lot has been said today about cooperation from various Government agencies. As we are getting towards the end of a long session, I just want to make a final point of clarification.

We received a total of 48,000 documents from Treasury and Justice. We just got another six boxes yesterday from Justice and another batch from Treasury, late last week.

My point is, and basically talking about the theme of cooperation, we just learned that Treasury, through minority staff, here, has an index to their numbered documents. It, unfortunately, may have just been an oversight, but the index never got to us, which is kind of disappointing.

Most of the Justice Department pages aren't even numbered.

In a normal document production, that shouldn't happen, and I hope we can get past this problem.

We do appreciate the documents that we have received, and we are hoping to get through them all. It is certainly going to be a challenge.

We try to be cooperative and we would appreciate the index. Since we have learned that the minority has been provided one, we think that we should, as well.

I just look and listen to all of this testimony, and I am very, very much trying to figure it all out, in my own mind. I am trying to keep an open mind.

I appreciate your coming here and I appreciate how tough it is. I just hope that we can come up with the right answer to tell the American people exactly what happened and why we went forward. I yield back.

Mr. MCCOLLUM. Reclaiming the little bit of time that I have left, here. I just want to ask three quick questions about the plan, again, because that was the primary purpose of this panel. I apologize for going over some of these very rapidly, but there were questions that just weren't asked earlier in the process.

Why was no written raid plan ever prepared? Mr. Chojnacki.

Mr. CHOJNACKI. The intention was fully there to prepare the appropriate raid plan on the Sunday, February 28.

The agents that were conducting the actual fine-tuning of the raid plan were at Fort Hood, practicing and working on what the assignments were.

That day was going to be the transition day from when they came back from Fort Hood and we executed the warrant on March 1. At that particular time, March 1, we would have had a completely written and typed raid plan, as required.

When we found, via the Security Director of Cox Enterprises, that the Waco Tribune-Herald was going to print the first story in their "Sinful Messiah" series on Saturday morning's paper, rather than Sunday morning's paper—or actually, some other time in the future—we tried to move the raid up so that we could execute the warrant without having to be concerned about the paranoia that might develop inside the compound, based on the inflammatory commentary in those articles and what we perceived to be an editorial comment that there was no law enforcement initiative to do something about that.

Mr. MCCOLLUM. So you really didn't have time to prepare it at the end, is what you are saying. Am I correct?

Mr. BUFORD. If I could respond, please?

Mr. MCCOLLUM. Yes, Mr. Buford.

Mr. BUFORD. Sir, on the late January meeting that we had in Houston, each of the Special Response Team leaders, created a written raid plan for their teams, and I created one for the outside cover teams. These were all written down and were all given to all of the Special Response Team members.

They were never consolidated, as I understand it, now, into one document, but each raid team did have a written raid plan.

Mr. MCCOLLUM. All right. Last question.

I understand there were videotapes that were taken from the undercover house. There were photographs, many of them taken from the undercover house. That they were either never developed or never reviewed by any of you in the raid planning operation or you who were making the decisions. Is that correct?

Mr. SARABYN. I saw some pictures that were developed.

Mr. MCCOLLUM. Do you know if the pictures were developed, other than a handful of them? There were a bunch of them taken.

Mr. CHOJNACKI. I have no idea, sir, how many were developed. At the very beginning of the undercover phase, we had difficulty with operator error. After that time, Mr. Sarabyn assigned a senior—we sent technical experts to show the undercover agents what problems they might be having with the cameras.

Mr. MCCOLLUM. The same thing is true with the videotapes? Mr. Merletti, do you want to comment on that?

Mr. MERLETTI. During our investigation, we found—and this is an approximation—I would say about 35 to 40 percent of the photographs that were taken had not been developed. We developed them.

There was a VHS tape, taken of the men working in the pit, and that was never shown to the planners.

One particularly disturbing photo was of a female at the front door of the compound, holding what appears to be a shoulder weapon, and the planners were never shown that.

Mr. MCCOLLUM. Thank you, Mr. Merletti, for explaining that.

[The prepared statement of Mr. Merletti follows:]

PREPARED STATEMENT OF LEWIS C. MERLETTI, ASSISTANT PROJECT DIRECTOR,  
DEPARTMENT OF THE TREASURY WACO ADMINISTRATIVE REVIEW TEAM

Thank you to both Chairman McCollum and Keliff for giving me the opportunity to appear before you today. My name is Lewis Merletti, and two years ago I served as the Assistant Project Director for the Treasury Department Administrative Review of the Alcohol, Tobacco, and Firearms' investigation of Vernon Wayne Howell, also known as David Koresh.

In the way of background, I am a veteran, having served from 1967 to 1970 in the United States Army's 7th Special Forces Group, Fort Bragg, North Carolina and in the 5th Special Forces Group in the Republic of Viet Nam. I graduated from Duquesne University in 1973 and was appointed as a Special Agent in the United States Secret Service in 1974. I have been assigned to the Philadelphia and New York Field Offices, where I participated in numerous complex criminal investigations, including interviews

of some of the survivors of the Jonestown Massacre. I have been a team leader on a Secret Service Tactical Counter Assault Team and have been the Special Agent in Charge of the Baltimore Field Office and the Secret Service's training center located in Beltsville, Maryland. While assigned as the Assistant Project Director for the Department of Treasury Waco Administrative Review, I was the Deputy Assistant Director for the Secret Service's Office of Inspection. I am currently assigned to the Office of Protective Operations.

On February 28, 1993, agents of the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms attempted to execute lawful search and arrest warrants at the Branch Davidian Compound near Waco, Texas. They were met with a murderous hail of gunfire and as a result, four agents were killed, and more than 20 were wounded. Several residents of the Compound were killed in the exchange of gunfire between ATF agents and those inside the Compound building.

The Treasury Department, understanding the need for a comprehensive review of the events leading to the failed attempt to serve the warrants, began planning for an administrative review, which would fully examine ATF's actions at Waco. On April 19, 1993, President Clinton directed the Treasury and Justice Departments, which are responsible for the ATF and the FBI, respectively, to conduct "vigorous and thorough"

investigations of the events leading to the loss of law enforcement and civilian lives. The Treasury Department acted immediately. Secretary Bentsen directed Ronald K. Noble, then Assistant Secretary of the Treasury (Enforcement) designate, to lead a Treasury review of ATF's criminal investigation of Koresh and the unsuccessful effort to execute search and arrest warrants. The Review was also to consider any misleading or contradictory statements made to the public by ATF officials.

In an effort to ensure that the Review's investigation was impartial and comprehensive, three individuals of national prominence and integrity agreed to serve as Independent Reviewers -- watergate prosecutor Henry Ruth, Pulitzer Prize journalist Edwin Guthman and Los Angeles Police Chief Willie Williams. They were to oversee and provide guidance to the investigation, consider its findings, and assess the final report. Treasury's Office of Inspector General was to monitor the review team investigation to provide assurance to the Department that the project plan was complete and properly implemented and that all relevant facts were fully considered. Additionally, outside experts in tactical operations, firearms and explosives from varied law enforcement and military backgrounds were enlisted to consider the technical aspects in their area of expertise. Each of these ten experts provided independent reports on their analysis of the investigation. Their conclusions are appended to the Treasury Department report.



N. Geoffery Moulton, Jr. was named Project Director for the Review, and David L. Douglass and I served as Assistant Project Directors. A team of seventeen senior criminal investigators were selected from the U.S. Customs Service, the IRS, and the U.S. Secret Service to assist in the investigation and preparation of the report.

I interviewed each of these investigators. I advised them that the Review was not a criminal investigation, but an administrative review and that the purpose was to find the truth of what happened at Waco and to report those findings. The Review was not to be either a "witch hunt" nor a "whitewash", but rather, a tough, thorough, and detailed investigation with no limitations on where that investigation might lead.

As the investigative plan was developing, the review team received a briefing from the Secret Service's Traumatic Incident Program on what the team could encounter as they conducted the interviews of those agents involved in the shooting at the Branch Davidian Compound. In fact, many of the traumatic reactions addressed by the Program were exactly what the investigative team encountered and I believe that because of the Program we were better prepared to assist the agents being interviewed to cope with very emotional recollections. A number of other briefings occurred as well. Those briefings provided background information addressing ATF's mission; the technical aspects of

converting guns to machine guns; and a general discussion of the legal ramifications problematic with an administrative review in the face of an ongoing criminal investigation, as well as the possibility of resultant personnel actions.

The murder investigation of the four ATF agents was being conducted by the Texas Rangers, who supported a complete, impartial review by the Treasury Department. I met with the lead prosecuting Assistant U.S. Attorney, Ray Jahn, and I informed him of how the Review was to be conducted and our concern with regard to the on-going murder investigation. ATF Director Stephen Higgins, in a memorandum to the Assistant Secretary for Enforcement, requested the Office of Enforcement assume leadership for a comprehensive review of the incident.

With this spirit of cooperation and commitment from the Treasury Department, the ATF, the Texas Rangers and the U.S. Attorney's Office at Waco, the investigative team began collecting and reviewing all existing material relating to the ATF investigation of Koresh. It included ATF's investigation of Koresh and the development of probable cause, the planning and execution of the search and arrest warrants, the decision making process to proceed with the execution of the warrants, and media statements made by ATF officials after the raid.

The interviews were organized to encompass all areas of

consideration and included: ATF agents; Treasury Department officials; other Federal law enforcement officers; state and local law enforcement officers; neighbors of the compound; local merchants; former Davidians; National Guard and military personnel; personnel who provided non-law enforcement support; members of the media; and anyone else who might have pertinent information. In all, more than 500 of these persons were personally interviewed by this Review.

In most cases, prior to the interview of ATF "line" agents, the Review Project Director and I would meet with them and explain the Review process and mission. We would attempt to answer any question posed and respond to any who raised concern with the process. After each interview, we met individually with each agent to determine if the interviews caused them any concerns. Both Geoff Moulton and I were impressed with the overwhelming positive responses by those agents who were interviewed, not only with regard to the Review process, but with regard to the manner in which the interviews were conducted. Almost without exception, the "line" agents welcomed the Review and demanded that the truth be heard.

Each one of our interviews was reflected on a Memorandum of Interview, all of which have been produced to these Committees, and all of which were turned over to the prosecution team in Waco.

I cannot adequately describe to you the process the Review used to conduct the investigation and the manner in which the report was drafted without commenting on the commitment and dedication to the process of the members of the review team. Almost without exception, after each battery of interviews were completed, the entire team - over twenty agents and lawyers - would meet and to analyze each interview. In this manner, all team members became aware of all aspects of the investigation. This was not an easy or short process. Each detail of a factual event from an interview was brought forward. It was analyzed and compared with details about the same factual event from other interviews. When a disparity or contradiction was noted, further investigation was conducted until a consensus among the team members was reached on the disputed detail. In addition, lines of inquiry were often developed during these meetings and all team members contributed to the decision to go forward with or limit the scope of inquiry.

This process extended to the drafting of the report as well. As each section was drafted, it was presented to the entire team. Each member independently reviewed that section and a meeting was convened to discuss word by word, line by line, paragraph by paragraph, the factual content of the section and any conclusions the facts might engender. This process was repeated over and over again until there was agreement by all members, that the section of the report contained all the factual information

necessary to reach the stated conclusions and that the information was accurate and presented fairly. Needless to say, this process was long and arduous and I feel that only fully committed individuals with a strong belief in fairness and the pursuit of the truth could have completed the process.

The Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell, also known as David Koresh, is partly the product of a group of committed individuals who worked countless hours, spent many days away from their home and family, and who endeavored to get at the truth that would answer the questions raised in the aftermath of the failed attempt to serve the warrants. It is partly the product of a government that insisted, that a group such as this be formed and then mandated it to find the truth. But it is mostly the product of the men and women of the ATF, who came forward willingly to tell their story and who told their story without regard to any self interest or fear of repercussions in order that the death of their comrades in arms will not have been in vain, and that their agency learn from the mistakes made and become a stronger organization.

Therefore, I stand by the solid, time tested integrity of the report, as do my seventeen fellow investigators, and I look forward to the Committees affirmation of this Review.

Mr. MCCOLLUM. The time is gone, except for one—what do you want, a clarification, Mr. Zeliff?

Mr. ZELIFF. Mr. Chairman, I want one quick point of clarification. Minority has brought it to our attention and I think it is only right to correct.

I believe Mr. Mica had indicated that we did not get, earlier today, the two personnel files of both of you. I understand that we have now received them. I just want to make that point.

Mr. MCCOLLUM. Well, I want to thank you for that.

Mr. BREWSTER. Mr. Chairman. Could I ask just one 30-second question?

Mr. MCCOLLUM. You may, without objection.

Mr. BREWSTER. You have mentioned McDonald's twice, and that there was apparently a plan by the Davidians to go raid a McDonald's or something.

I have not read that anywhere else, anywhere, or heard the testimony from anyone else. Are the rest of you aware of that, as well?

Mr. SARABYN. I think the Jahns discussed it when they testified earlier.

Mr. BREWSTER. I am sorry?

Mr. SARABYN. I think the Jahns discussed it when they testified earlier.

Mr. MCCOLLUM. Mr. Brewster, if I may, Mr. Buford clarified that by saying that he heard about it after the raid was over with. They did not know about this plan, or it was Kathy Schroeder, I believe you said, Mr. Buford, who had said something like this. But, this was all after the fact.

Mr. BREWSTER. This was after the raid.

Mr. MCCOLLUM. It did not have any effect on their decision, because they didn't know anything about it before the raid.

Mr. BREWSTER. Thank you.

Mr. MCCOLLUM. I want to thank all of you for coming. I know how trying it is. Two or three of you will be back with us, again.

I don't know if you will, Mr. Buford, we have discussed that.

But in any event, we really appreciate as much time as you have put in, as late as you have, tonight.

Not to mention the fact that we understand, despite all of the difficulties of our questioning, what you went through with respect to this raid.

Anyway, tonight's hearings, and this panel's testimony, is concluded. We are in recess until tomorrow morning at 9:30 a.m., here in this hearing room.

[Whereupon, at 11:11 p.m., the subcommittees adjourned.]

# ACTIVITIES OF FEDERAL LAW ENFORCEMENT AGENCIES TOWARD THE BRANCH DAVIDIANS

## (Part 1)

FRIDAY, JULY 21, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL SECURITY, INTERNATIONAL AFFAIRS, AND CRIMINAL JUSTICE, COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT, JOINTLY WITH THE SUBCOMMITTEE ON CRIME, COMMITTEE ON THE JUDICIARY

*Washington, DC.*

The subcommittees met, pursuant to notice, at 9:40 a.m., in room 2141, Rayburn House Office Building, Hon. William H. Zeliff (chairman of the Subcommittee on National Security, International Affairs, and Criminal Justice) presiding and Hon. Bill McCollum (chairman of the Subcommittee on Crime).

Present, from the Subcommittee on National Security, International Affairs and Criminal Justice: Representatives William H. Zeliff, Jr., Robert L. Ehrlich, Jr., Steven Schiff, Ileana Ros-Lehtinen, John L. Mica, Peter Blute, Mark Souder, John B. Shadegg, Karen L. Thurman, Robert E. Wise, Jr., Gene Taylor, Tom Lantos, Louise McIntosh Slaughter, Gary A. Condit, and Bill K. Brewster.

Present from the Subcommittee on Crime: Representatives Bill McCollum, Steven Schiff, Stephen E. Buyer, Howard Coble, Fred Heineman, Ed Bryant of Tennessee, Steve Chabot, Bob Barr, Charles E. Schumer, Robert C. Scott, Zoe Lofgren, Sheila Jackson Lee, Melvin L. Watt.

Also present from the Committee on Government Reform and Oversight: Representatives William F. Clinger, Jr., Cardiss Collins of Illinois, and Gene Green.

Also present from the Committee on the Judiciary: Representatives Henry J. Hyde and John Conyers, Jr.

Also present: Representative Chet Edwards.

Staff present from the Subcommittee on National Security, International Affairs and Criminal Justice: Robert Charles, staff director and chief counsel; L. Stephan Vincze, defense counsel; T. March Bell, counsel for justice affairs; Marshall Cobleigh, senior policy advisor; Michele Lang, special counsel; Sean Littlefield, special assistant and clerk; Committee on Government Reform and Oversight: Kevin Sabo, general counsel; Judith McCoy, chief clerk; Jeffrey Wilmot, professional staff member, Bud Myers, minority staff director; David Schooler, minority chief counsel; Ronald Stroman, mi-

nority deputy staff director; Donald Goldberg, minority assistant to counsel; Cherri Branson, minority professional staff member; Ellen Rayner, minority chief clerk; Cecelia Morton, minority office manager; and Eddie Arnold, minority public affairs officer.

Staff present from the Subcommittee on Crime: Paul J. McNulty, chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, assistant counsel; Audray L. Clement, clerk; Committee on the Judiciary: Alan Coffey, general counsel/staff director; Dan Freeman, parliamentarian; Julian Epstein, minority staff director; Perry Apfelbaum, minority general counsel; Melanie Sloan, minority counsel; and Tom Diaz, minority counsel.

Mr. ZELIFF. Good morning. The joint hearings of the Oversight Subcommittee on National Security, International Affairs, and Criminal Justice and the Judiciary Subcommittee on Crime will now come to order.

Mr. LANTOS. Mr. Chairman, I have a parliamentary inquiry.

Mr. ZELIFF. The gentleman will state his parliamentary inquiry.

Mr. LANTOS. Chairman, for the last 3 days some of us who are concerned about the integrity of these hearings and about the cloud that still hangs over the involvement of the National Rifle Association have requested that NRA individuals who were surreptitiously—

Mr. ZELIFF. Will the gentleman state his parliamentary inquiry?

Mr. LANTOS. I am attempting to and I hope the chairman will not attempt to muscle me.

I would like to state an inquiry and I would like to do so uninterrupted. For the last 3 days we have requested that NRA individuals who were surreptitiously involved in the preparation of these hearings—and there is a New York Times story which I think you would wish to address because it goes directly to your involvement—

Mr. ZELIFF. The gentleman is not stating—

Mr. LANTOS. I am stating my parliamentary inquiry. We were told by the chairman yesterday and by you that you will consult with your leadership before you respond to our request that NRA officials involved in the preparation of this hearing be invited to testify under oath.

My inquiry, Mr. Chairman, is at what point will this happen?

Mr. ZELIFF. Well—we discussed with the leadership the decision that we made relative to that request and they have concurred with our judgment. We are not going to have subpoenas of either NRA or other outside groups. We are really here to get to the bottom of what happened at Waco and that is what we are going to do.

Mr. LANTOS. Mr. Chairman, I have not used this term until now, but now I am afraid we are confronting a coverup, the coverup of the involvement of the National Rifle Association in the preparation of this hearing, which I think is most regrettable and I hope you will reconsider your decision.

Mr. ZELIFF. Thank you. I don't believe you are stating a parliamentary inquiry—

Mr. MICA. Mr. Chairman, I have a parliamentary inquiry.

Mr. ZELIFF. The gentleman will state it.



Mr. MICA. I presented to you, Chairman Zeliff, and Chairman McCollum, a request this week and I, too, am concerned about the impact of outside influence on the integrity of these hearings. Specifically, I have expressed grave concern about the potential irreparable contamination of the hearings, by what I consider very serious and questionable actions of the Clinton administration and the members of the Democratic minority.

I presented to you a request—

Mr. ZELIFF. Please state your parliamentary inquiry.

Mr. CONYERS. Regular order, Mr. Chairman.

Mr. MICA. I presented subpoenas for Mr. Podesta who is counsel to the President and for other administration officials who I believe are involved in a coverup, and if the minority insists on subpoenaing and expanding the content of this hearing, I insist that action be taken on my request and my parliamentary inquiry is, when will there be action to see that the outside influences and the concerted effort by the administration and their officials to cover up what is going on on their side of the aisle and thus what the administration is doing? When is that going to be addressed?

Mr. ZELIFF. The same thing applies. We are not going to get involved with subpoenas of outside interests of any kind at this point.

Mr. MICA. I have another request, sir—

Mr. SCHUMER. Can we make a one-for-one trade with a player to be named later?

Mr. ZELIFF. That little bit of humor is welcome, Mr. Schumer. Thank you very much for setting the stage for cooperation.

I would like to finish opening if I can. We have some very important witnesses that we would like to get to who have come from pretty far away. We respect their time.

I would like to welcome the public, my friends on the Oversight and Judiciary Subcommittees, full committee chairs and ranking members. I would also like to welcome our cochairman, Chairman Bill McCollum of Florida. I know he is enjoying these marathon hearings, 12 or 13 hours, didn't move from the Chair last night, but we are making good progress.

For all those present today, this is the third day of congressional oversight hearings of the executive branch conduct involving the 1993 confrontation with the Branch Davidians near Waco, TX. These hearings will host almost 100 witnesses.

These are the result of an extraordinary effort on the part of all participating members and are intended to address basic Government agency accountability and to help all of us understand better what happened at Waco and why, particularly on or near February 28 and April 19. These hearings are, as we have stated on both sides of the aisle, unswervingly devoted to one task; finding the truth and fairly presenting it to the American people.

Since we had some difficulty getting concurrence in an agreement previously reached by the majority and minority leadership, we will proceed according to the 5-minute rule today as we did yesterday. I should also explain that I am in the Chair today as a result of an agreement between Chairman McCollum and myself. Over the 8 days of hearings we are swapping the duties of the Chair on a daily basis. By separate agreement we are today in the

Judiciary's room and will be in the Government Reform and Oversight room on Monday.

We now move to opening statements.

I also mention that by agreement of all we will forgo a break for lunch. We will work right through. We hope that we can get our business done with both panels by 3 o'clock.

We will be hearing opening statements from the majority subcommittee Chairs, then minority ranking members. And after that is completed, we will introduce the first panel. I will start with the first opening statement.

Our purpose as men and women of conscience and goodwill, as Members of Congress who are assigned the difficult task of true and thorough oversight of our Government agencies and to seek the truth without hesitating, recognizing and making sure it is understood, that is the goal of good oversight. We have spent too much time already professing what these hearings are not about.

Their innate fairness, despite the difficulty of most of the subject matter, should be apparent now to all Americans. We have heard from those who knew David Koresh, from those who conducted the initial ATF investigation, from the prosecutors who charged the surviving Davidians, those who escaped the fire and from ATF line agents, commanders and a deputy director during the ill-fated February 28, 1993, assault.

We have heard from legal experts, investigative journalists, representatives of the elite antidrug special forces from which ATF requested special training and from most of other relevant sources of information. I do not personally think we could be conducting these hearings more fairly or methodically or inclusively.

While we opened with regrettable friction, there has been vigorous questioning of witnesses. In addition to the facts that got shaken out the first day, we learned yesterday that an agent in charge of the raid says he never thought he had lost the element of surprise which is why he ordered the raid to go ahead.

The direct conflict between his testimony and other credible testimony sets up additional concerns and questions. We are listening and trying to make sense of it all and that I hope is what all interested Americans are doing as well as a schedule of the very best witnesses come before us today and in the days ahead. If this were a baseball game, we would be 2 innings into it out of 9 total.

We would be much less than halfway through our seventh inning stretch. We are just getting underway. Moreover, there is little joy in this process. The events and the questions themselves are very sad.

In the events at Waco and the botched raid and its fallout, we lost more than 80 American lives, 4 young ATF agents who fell in the line of duty, a duty to serve us faithfully and to keep us secure. These hearings aim to keep faith with those agents and their families and their loved ones.

We cannot bring them back but we can look long and hard at what caused them to fall. And when all the rhetoric is over, I really think that is why so many of us are drawn to these hearings.

We want to know how it all happened. We want to know why also 51 days later, not 50, not 52, someone lost patience and launched large volumes of CS gas in a residence with 22 children

inside, the residence that soon caught fire and in 15 minutes burned up all 22 children and their 60 or more accompanying adults. That, too, is an unmitigated tragedy.

It scalds the soul, makes a decent person's heart heavy. Somehow you sit and feel overcome with regret that we couldn't have prevented all this. Do we really stop child abuse by ending a child's life prematurely? Isn't there a better way?

Shouldn't we have been more careful? What would it have cost to wait it out? Did good judgment get clouded by other concerns? We have to ask these difficult questions. The conscience of America calls out to us for answers.

Coming back to details, we have come up with some important answers. There were some important new facts on day one, but yesterday we also learned that ATF apparently misled the DOD, essentially lied to establish the defense that a necessary drug connection entitled them to get special forces training by the Nation's crack drug interdiction unit, JTF-6.

In addition, the money for the Waco military training and equipment came and it is conceded by the administration's Assistant Secretary of Defense, Ambassador Holmes out of money spotted for fighting the Nation's drug war.

On top of this, further and increasingly fatal flaws were revealed in the so-called Treasury review report. Treasury documents strongly suggest and at other points witnesses testified that there are apparent cases of obstruction of justice littered throughout the review process.

The ATF officer got training that was indiscriminate firing or mute, not the more discriminate close quarters training. DOD trainers were not convinced that the ATF believed in the presence of a methamphetamine lab. That is all in one day and all new facts. There are other new facts and documents and testimony, but these are a start at understanding the truth and, in my view, the American people expect tough and thoughtful oversight and that is why we are here. We will find the facts, we will seek the truth.

I just would like to mention one thing that seeing in this morning's paper this quote from the Washington Post and it is a reference to the President. He said "People in elective office who portrayed Federal law enforcers as some sort of armed bureaucracy acting on private grudges and hidden agendas ought to be ashamed of themselves."

For this Member of Congress, I will let everybody speak for themselves, I am totally committed to the process of finding out the truth. I make no apologies for finding out the truth and I hope everybody else is committed along with the rest of us.

Thank you.

I yield to the gentleman from Florida, Mr. Bill McCollum, cochair of these subcommittees.

Mr. MCCOLLUM. Thank you very much for yielding to me. I think if we are looking at this from the perspective of where we have gone and where we are going to go, we need to have a little overview this morning. We have been through a couple of days of hearings now.

Most of the testimony we have had in these 2 days has been to give us a prelude to a raid that occurred on February 28, during

which 4 ATF officers were killed, as were 6 other Americans in the compound. Next week we will begin to question the final assault as well as deal with the FBI and the Justice Department officials involvement.

What we have learned at this point in time is that we had a very confused set of circumstances. We did not have a written plan for the raid that occurred on February 28.

The three primary planners who testified last night stated a number of interesting points and had some serious disputes with the Treasury report with regard to 10, 15 or 20 percent of the accuracy of that report. During this process we have learned that the principals involved in the ATF who directed the raid were dismissed, but two of them who were here last night have been reinstated.

So while the Treasury report says that they lied about certain key elements, one has to wonder why they were reinstated under those circumstances.

So we have begun to listen to very interesting facts. They say the report is not accurate. Treasury says it is, and so on and so forth. We are going to hear today from those who were at Treasury at the time this raid was planned and executed to find out just what role the Treasury Department had in the process of the planning for and execution of the raid.

We heard some experts yesterday say that they didn't believe that the question of dynamic entry was such a good idea. A couple have said maybe it was. We heard evidence from one who had been the original crisis management program person at the FBI who was 23 years with that agency say that he thought that David Koresh, the head of this particular religious group, should have been captured outside the compound and that patience should have been had.

Wednesday he and the former head of the enforcement part of ATF in years gone by tell us that they thought that a siege was a better idea. It looks to me as though Mr. Buford, who was involved in the planning of this raid, had relied heavily on his bad experience at an earlier raid in Arkansas to discount the idea of an extended or protracted siege.

There were apparent opportunities for Koresh to be captured outside. They did not wait around. They wanted to get their search warrants executed. There was a lot of haste involved.

I think that we are seeing evidence that the actual planning of this having never been committed to writing was done as a dynamic entry without all of the intelligence that should have been there. We know that it wasn't all gathered. We had testimony last night to the effect that photographs taken at the outlook house where they were trying to see what was going on in the compound went undeveloped. One of those photographs would have shown that we had a woman standing up on guard with apparently a semiautomatic or automatic rifle.

There were videos that should have alerted them to a little more danger than they were expecting. There were videos that were taken there that apparently were never reviewed by the planning officers before they made the raid. We are going to hear on Monday what the intelligence fellow who went inside has to say.

The bottom line is that we have a situation in which some folks died on February 28. We have some evidence that has come out in the last couple of days that shows there was no particular danger to the community by waiting around and trying to capture Koresh instead. We have some real dispute over the judgment that was used in this, but we are moving progressively through the way this happened and why it happened and ultimately trying to assess who was responsible for the mistakes that were made. Indeed we have heard mistakes that were made, even mistakes that the officers said yesterday they made and wish could have been corrected.

I resent the suggestion by anybody that this side of the aisle has played politics or is playing politics with this, that we do not care about law enforcement or the ATF officers. We do. We care about them, their families, the loss of life involved.

We are not playing politics. We are trying to answer the basic questions of who, what, where, why, when, and how and get some accountability into this process. It does take thorough examination. Not every fact brought out here is going to be new.

But it doesn't have to be new because the American public has only received snippets off one television program or another about this. I would suggest that most people never read reports like the Treasury report and certainly haven't had it challenged as it is being challenged in this hearing process. We need to go through this, and efforts to distract us and inflammatory statements notwithstanding, our job is to get through the process.

We are going to go through this. We are looking forward today to talking with Treasury and others about their involvement. We are also looking forward, as we move into the next stage, to finding out what actually happened on the day of the raid and then the wrap-up review of it.

Thank you, Mr. Chairman.

Mr. ZELIFF. Thank you, Mr. McCollum.

The Chair recognizes the ranking minority member of the Government Reform and Oversight Committee, National Security, International Affairs, and Criminal Justice Subcommittee, my good friend Karen Thurman from Florida.

Mrs. THURMAN. Thank you and good morning.

Thank you for clarifying a misstatement in yesterday's hearing about missing Treasury personnel records.

The Department of the Treasury did provide those documents, Mr. Mica, just so you will know. I think you had left the hearing prior to that coming back, but you do have those.

Mr. MICA. Would the gentlelady yield?

Mrs. THURMAN. No. Not at this moment.

Let me finish my opening statement. Last night we also heard about the preparation for the raid and the raid itself from some of those most responsible for its planning. I listened with great sadness as William Buford recalled being wounded repeatedly and watching his friends and fellow officers dying around him from gunshot wounds.

Despite wearing helmets and bulletproof vests, the firepower these agents faced was fierce and unrelenting. This morning's testimony will get to the heart of what went wrong with the ATF raid on February 28, 1993. This is the tragic day when four law enforce-

ment officers and six Branch Davidians lost their lives before a cease-fire could be negotiated.

I hope that today's proceedings will shed more light on that disastrous day. I will repeat my earlier statements that my mission in these hearings is to find the answers that will ensure that another Waco will never happen again.

Another important witness we will hear from today is Dr. Joyce Sparks of the Texas Department of Protective and Regulatory Services. Dr. Sparks interviewed Kiri Jewell 6 days before the ATF raid in 1993 and concluded that Kiri was quite credible as everyone I believe on this panel now knows.

Dr. Sparks will provide compelling testimony about child abuse taking place inside the compound as did Dr. Bruce Perry testify in our first day. I must say that I disagree with some Members who now contend that the issue of child abuse is irrelevant to this hearing process.

The issue has been repeatedly raised by the majority specifically in criticizing the ATF search warrant and by the decision to subpoena the authors whose conclusion was generally that David Koresh was a preacher with some unusual beliefs but no threat to anyone. I believe we have proven beyond any doubt that David Koresh was molesting young girls and talked of mass suicide.

The fact is that we must look at every aspect of what happened at Waco. Kiri Jewell's brave testimony, however disturbing to all of us both as parents and Members of Congress, adds to our understanding of these events. This tragedy, after all, is about the loss of human life. We should never forget that.

At this time, I would like to give the balance of my time to Cardiss Collins, the ranking minority member of the committee.

Mrs. COLLINS of Illinois. I would like to welcome our witnesses today. It may be Friday for most people, but in this room we have a lot of Monday-morning quarterbacks.

This is a continuation of yesterday's hearing on the decisions leading up to the Waco raid. With four agents losing their lives, and many wounded, it is not surprising that the raid has been severely criticized by many of my colleagues. It has also been criticized by the agency itself.

What I find interesting are some of the alternatives proposed by my Republican colleagues. Several colleagues suggested that Special Agent Aguilera should have accepted David Koresh's invitation to come over and inspect the weapons.

I wonder how many of these Monday-morning quarterbacks would have done that. William Buford, who was shot numerous times during the Waco raid, including numerous wounds inflicted after he had been disabled, said there would be no way he would have allowed the agent to the compound with David Koresh's known arsenal of weapons.

If agent Aguilera had been ambushed, I could just imagine the congressional hearings looking into how a supervisor could send his agent into Mount Carmel without an armed force, knowing about all of David Koresh's machineguns.

The Monday-morning quarterbacks also choose to ignore congressional action. Yesterday, much attention was paid to whether ATF made up a drug allegation in order to get military assistance, and

whether the rules of posse comitatus were broken. Unfortunately, no attention was paid to the numerous congressional mandates that the military should get involved in domestic law enforcement, particularly in the war on drugs.

I have consistently opposed the use of military in law enforcement. In 1986, I opposed an amendment to require the military to give assistance in enforcing the drug laws. The amendment passed 359 to 52 with just two Republican dissenters. There was a third Republican dissenter that day, President Reagan, but he was ignored by his party. As long as you write loopholes, agencies will find a way to use them.

The Monday-morning quarterbacks also ignore the taint on these hearings caused by the committee's relationship with the National Rifle Association. Despite repeated calls to investigate the role of the NRA in these hearings, particularly in light of their calls to a witness alleging that they were putting together the hearings, Republicans refuse to investigate.

Republicans want to review every phone call and every scribble that involved President Clinton and his counsel, despite the absence of a shred of evidence that his involvement extended to anything but keeping fully informed. Yet when we ask questions about the committee's relationship to the NRA, we are told that all communications are privileged, they are sensitive, there are attorney-client privileges.

So welcome to day 3 of 8 days of Mondays—with a room full of Monday-morning quarterbacks.

Thank you for yielding.

Mr. ZELIFF. I now recognize Mr. Schumer from New York.

Mr. SCHUMER. I thank the gentleman for yielding.

I guess the theme of my opening statement is nothing new, nothing new, nothing new. To quote today's New York Times "no significant new evidence was cited."

Now, these hearings I think have been billed as looking at the—a new way to look at the Waco tragedy. I think if they were billed as they are now being by some, well, no new facts will come out, but for the first time the American people will see on C-SPAN what happened at Waco, even though it has all been included in books and other things, then we would be doing hearings on everything under the Sun and that is the only thing we would do.

I also think it was significant yesterday that the case was made conclusively, again to quote the New York Times, that none on the majority side—that the majority side offered no proof that the posse comitatus law was violated and in fact one at the witness table said there was no doubt the posse comitatus law was not violated despite all the talk before the hearings that there might be serious breaches, or this, that, or the other thing.

It seems to me, Mr. Chairman, that evidence that is purporting to be "new" coming from—and I am not saying from members of this committee—this cottage industry of those on the extreme right has been repeatedly discredited and would not pass the laugh test in a real court of law. The majority case would raise serious questions of competence of counsel in a genuine trial.

Let me give you some examples. A witness like Robert Sanders, a former ATF official who had nothing—had no evidence, no first-

hand evidence of what happened at Waco—was called here, and he makes his living by feeding on cases referred by the NRA and who admitted yesterday he meets regularly with NRA leader Tanya Metaksa.

Why was he here? Why? How about evidence like the Larry Sparks memorandum. It was just mentioned. It was repeatedly ragged on by members of the other side. Larry Sparks was fired for sexual harassment and he bragged that he would do anything, that is his quote, do anything to get the ATF in revenge. If this were simply an even handed hearing to get the facts, maybe the Sparks memorandum would have been mentioned, but it hardly would have been a major subject of discussion with 61 people on the other side saying what Sparks said is all wet.

And finally, redundant questioning of witnesses like the Special Forces soldiers who were here yesterday, fine brave men who were forced to repeat over and over and over again their statements that they have stayed strictly within the law, even though the majority had no proof of any wrongdoing.

Today's first panel again, it seems to me, underscores the nature of this show trial. Decent men and women like Secretary Bentsen and his staff are being dragged up here to go over matters already thoroughly investigated and documented.

No one has alleged—there is not even a scintilla of evidence—that Secretary Bentsen even knew what was going on here. He was busy on other matters. And yet here he is coming up here to be asked again the same thing that he was asked time and time again that is written and that is documented.

Let's recall witness Buford, the brave ATF man who led the raid, lost three in the ambush. This is what he said yesterday, very poignantly, something everyone on this panel should be aware of. He said he felt like—his coming here, he felt like he did when he came home from Vietnam, vilified for doing his duty.

So that is what I think we have. To me what sums up this proceeding maybe better than anything else was the testimony of Robert Sanders, the disgruntled ATF employee, who had no direct knowledge of events at Waco but did have direct contact with the National Rifle Association. Today we will hear from Joyce Sparks, who was misled by the NRA into believing they worked for the committee. Once again, we see the long arm of the NRA in this hearing.

In conclusion, Mr. Chairman, the administration has given the majority every document they have asked for, no matter how trivial and irrelevant they may be to Waco. Yet our one request—that we get to the bottom of the role of the NRA in this hearing—has been denied again and again. If the other side has nothing to hide, they have nothing to fear.

I thank the gentleman.

Mr. ZELIFF. Thank you, Mr. Schumer. I would like to make a point that no one was dragged here this morning. Everybody appears voluntarily. No one is subpoenaed to appear. We thank you all for coming.

If the first panel would join us at the witness table.

Mr. CONYERS. Mr. Chairman, could I make a few comments to begin this hearing?



Mr. ZELIFF. I would be delighted to have you make a few comments.

Mr. CONYERS. I thought you would.

Mr. ZELIFF. My good friend from Michigan.

Mr. CONYERS. Thank you very much. I once again commend you for your excellent job as chairman. It is interesting, ladies and gentlemen, that the—please be seated for just a moment. You can stand later to take the oath.

It is interesting that there are claims on the other side, by my friends the Republicans that there are many, many new facts coming forward, and I was particularly interested in the claim that they wanted to remake about their concern for law enforcement. It is very important they do that—

Mr. ZELIFF. I thought you said a minute or so. Could you do a minute? Otherwise, the people on the other side will want equal time and I really would like to move forward.

Mr. CONYERS. They were waiving their time on the basis that I waived mine.

Mr. ZELIFF. We were going to do unanimous consent—

Mr. CONYERS. You are still a good chairman, so good that I am going to relinquish my time. I can put my statement in the record.

Mr. ZELIFF. You are an absolute great American.

Thank you very much.

Mr. CONYERS. Thank you very much.

Mr. ZELIFF. You are wonderful. Thank you.

As a point of personal privilege, I would like to yield the Chair to Ms. Jackson Lee for purposes of the introduction of Secretary Bentsen.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

That adds again to your excellence as the Chair presiding today. It takes a special privilege to be able to introduce both a great Texan as well as a great American and this does not in any way taint my commitment to finding out the truth of these proceedings.

But I think that we would be less than honest if we did not acknowledge former Secretary Lloyd Bentsen for his years of service as Secretary, but more importantly as a senior Senator more than two decades from the great State of Texas, and his great leadership in the U.S. Senate chairing the Senate Finance Committee. But personally knowing his great commitment to civil rights and civil justice I am, for one, very proud of the service that he has given to this Nation, particularly the service that he has given to the State of Texas.

Senator Bentsen, let me add as a Texan from Houston, TX, which I can proudly say that you so warmly claim as your home, along with many of your family members, that we are proud of the service that you have given, we appreciate your presence here, and are more than delighted to have you contribute to a process which the American people have come to believe in this Nation, that is, truth and facts and justice.

So I applaud you for your service.

Thank you, Mr. Chairman for allowing me this privilege. Again, Secretary Bentsen, welcome.

Mr. ZELIFF. Thank you very much.

I would like to also say that that echoes the comments that I made to you personally when I came in this morning.

I would like to introduce all the witnesses. Mr. Steve Higgins is former Director of the ATF; John Simpson, former Acting Assistant Secretary of Treasury; Christopher Cuyler, ATF Liaison for Assistant Secretary; Michael Langan, former Acting Deputy Assistant Secretary of Treasury; and Lloyd Bentsen, former Secretary of Treasury.

It is the customary practice—

Mr. LANTOS. Mr. Chairman, point of parliamentary order.

Mr. ZELIFF. Please state your parliamentary inquiry.

Mr. LANTOS. Mr. Chairman, I chaired a previous subcommittee of this committee. When Secretary Kemp appeared before us as a witness, although I swore every other witness, as a matter of collegial courtesy I did not ask Secretary Kemp to be sworn in. I don't believe it is appropriate to ask Secretary Bentsen to be sworn in.

Mr. ZELIFF. I don't believe he has any concerns about it.

Mr. LANTOS. I am sure he has no concerns.

Mr. ZELIFF. He is a member of the private sector and I don't know whether we should treat him any differently.

Secretary Bentsen, do you have any problems with being sworn in?

Mr. BENTSEN. I have no problem at all.

I appreciate the Congressman and I appreciate the Congresswoman in her comments.

[Witnesses sworn.]

Mr. ZELIFF. Please be seated.

Let the record show that the answer was in the affirmative.

The Chair recognizes Mr. Mica for 5 minutes.

Mr. MICA. Mr. Chairman, I am going to yield to you in just a second, but before I yield I do want to say that I think you and Mr. McCollum have accurately focused the purpose of these hearings. And the purpose is to see why four ATF agents died in a botched raid headed by a Federal agency and, at the very least, why at least 50 women and children were incinerated by the actions of the Federal Government, and that is the reason that we are here.

And furthermore, Mr. Chairman, I intend to pursue my request to also subpoena individuals who are now advising the White House, including Mr. Podesta, who has formerly represented handgun control and is now advising this administration on how to try to make a circus of these proceedings.

But with that, Mr. Chairman, I appreciate your yielding to me and I would yield the balance of my time to you.

Mr. ZELIFF. I thank you for yielding.

I would like the clerk to hand out the Roger Altman letter.

Mr. Bentsen, this letter is addressed to you, Mr. Secretary. I am sorry Mr. Altman could not be here today. He made himself available to the subcommittee yesterday but we are a little off schedule because of the change in the 5-minute rule and he has offered to make himself available next week. I would like you to comment on whether you saw the letter and did you take any action based on Mr. Altman's perspective?

What I would like to do is read the letter.

Mr. SCHUMER. Mr. Chairman, do we have copies of that letter? None of us have seen that.

We have a standing agreement that we are going to make these documents available both one side each to the other, so maybe you could hold up and we could get a copy of this letter. There was an agreement among counsel—thank you.

Can we make some copies for our side, please?

Mr. ZELIFF. I am going to adjust the timer on this. This letter is from Roger Altman, memorandum for Secretary Bentsen, subject Waco.

Ron Noble informed me that the Attorney General is weighing a request from the FBI to use an advanced form of tear gas on the compound in Waco.

This is dated April 15, 1993.

Among other things, this gas doesn't dissipate.

The FBI apparently has concluded that the outlook for a negotiated end to the standoff is poor. They don't believe it is worth waiting.

If the Attorney General approves the request, the gas would be used and, hopefully, the Davidians would be forced to leave the compound. The gas would not be followed by an assault.

This is Attorney General's decision. You said on Meet The Press that nothing like this would occur without your knowledge. As I understand it, you will be formally notified if Janet Reno OK's it.

My rough guess is that she won't. The risks of a tragedy are there. And if the FBI waits indefinitely, Mr. Koresh eventually will concede.

The subject is Waco and the date is April 15, 1993.

I guess the question is, did you receive this letter?

#### **STATEMENT OF LLOYD M. BENTSEN, FORMER SECRETARY OF THE TREASURY**

Mr. BENTSEN. Yes, Mr. Chairman. Yes, I received the letter. The decision, of course, was the Attorney General's decision.

Mr. ZELIFF. But being a person in a very responsible position, how in God's name could you not have called it off?

Mr. BENTSEN. The decision belonged to the Attorney General, not to me.

Mr. ZELIFF. Wouldn't this be something that would move you to call the President and isn't this a crisis where you could have influenced the result?

Mr. BENTSEN. I am sure all of these things were weighed by the Attorney General.

Mr. ZELIFF. So no matter what the Attorney General was going to do, who basically reported to you, it was OK?

Mr. BENTSEN. I get right back to the question of who has authority, who has jurisdiction and the jurisdiction belonged to the Attorney General. The decision was to be made there, with the investigation of all the facts.

Mr. ZELIFF. Did you tell the President? Did you give this letter to the President?

Mr. BENTSEN. I don't recall that.

Once again, I had my responsibilities and my budget and those I was complying with. This at this point had become the responsibility of the Attorney General.

I would like to say, Mr. Chairman, at some point here I have been called back, I had been in charge of my own time and my own responsibilities up until the last 2 days. I would like to have at

some point the opportunity to tell what we did at Treasury and what I set about in seeking the truth that you are talking about with this commission that did an exhaustive study that was commended time and time again by the media for the detail of that report as we sought the truth and then to—

Mr. ZELIFF. What we would like to do—we will give you that opportunity.

Over the next 2½ hours or 3 hours you will have that opportunity. My question is did you do anything as a result of this or did it just go in the wastebaskets?

Did you call the President? Did you alert anybody? Did you talk to Hubbell? Did you talk to anybody at all?

Mr. BENTSEN. I took care of my responsibility and my jurisdiction and that was the jurisdiction at this point of the Attorney General and I am sure that she had fully studied it before making her decision.

Mr. ZELIFF. Wasn't this an alarm that was crying out for some responsible action? If you see this—didn't Roger Altman sound the alarm and was anybody listening?

Mr. BENTSEN. Let me state that I am sure that this was gone into extensively and intensively in the Attorney General's Office.

Mr. ZELIFF. Did you personally do anything as a result of getting this alarm cry for help?

Mr. BENTSEN. I did an extensive study as to what had happened and corrections that had to be taken.

Mr. ZELIFF. But what about the time that you received this on 15 of April, 4 days before the process?

Mr. WATT. Regular order, Mr. Chairman.

Mr. BENTSEN. Insofar as the responsibilities I had to take care of, and I did just that, and jurisdiction at this point had been transferred to the Attorney General.

Mr. WATT. Regular order, Mr. Chairman.

Mr. ZELIFF. My time has expired.

Mrs. Thurman.

Mrs. THURMAN. At this time I would yield my time to the gentleman from Mississippi, Mr. Taylor.

Mr. TAYLOR. Thank you, Mrs. Thurman.

Thank you, Mr. Chairman. I want to begin by complimenting our chairmen in their zest for all of the facts. You have both said in the media, on television, we want to know all the facts.

What troubles me is that as the members of this committee start looking into what happened, we find it more important that we need to know what happened in the events leading up to the raid. Why was there a raid?

Yet when you look at the witness list it is notoriously slim on those events leading up to the raid. Last night sitting in that chair was an ex-Green Beret agent who got shot up. I asked him, in fairness to the agents who died, don't you think we ought to subpoena the people who wrote this article called the Sinful Messiah and published the editorial on the day before the raid calling for law enforcement to do something.

Don't you think it is fair to those four dead people and the 28 that got shot up that we would have Mark England and Darlene McCormick who wrote the article and then left town for fear for

their lives, who worked for a paper that changed the locks, took the identification off their vehicles, published the articles on a weekend because they would have a chance to judge the reaction of the Davidians, a people they knew to be violent before they went back and started bringing their employees in on Monday.

They were taking precautions because they knew what type of people they were dealing with. Don't you think we ought to know about the lady who claims to have been held captive there for 3 months, and don't you think we ought to know about another lady who compiled a hit list to murder ex-Davidians who were talking to the press and who were talking to law enforcement.

I have made a very simple request of our chairman. I would like those four people to be given the same opportunity to testify as everyone else. They denied that. So, Mr. Chairman, I take this opportunity to request that this committee subpoena those people because you cannot operate in a vacuum starting with the day of the raid.

You have to know why there was a raid. Just one little girl sitting there helped to make citizens aware, but there was a heck of a lot other wrong going on in that compound and a lot dangerous people who turned around and, by the admission of a ex-Green Beret, outgunned his people like no ambush he had ever seen in Vietnam. I, therefore, make the motion that we subpoena the four people listed in the letter that I politely wrote to you and the other chairman to request they be here.

I call for a vote, Mr. Chairman.

Mr. ZELIFF. You were not recognized for that purpose.

You were given 5 minutes under the 5-minute rule.

Mr. LANTOS. Mr. Chairman, I challenge the ruling.

Mr. TAYLOR. Mr. Chairman, is this a coverup? Don't you want the American people to know—

Mr. ZELIFF. We have 100 witnesses. We have given ample opportunity for the minority to supply their request for witnesses. We have accommodated it in every way we can.

Mr. TAYLOR. You received a letter from the minority asking that these people be subpoenaed. You denied it and Mr. McCollum denied it. Are the members of this committee afraid to make that decision?

Mr. HYDE. Regular order.

Mr. SCHUMER. We are in regular order.

Mr. TAYLOR. Is this committee afraid to have those people testify? Are you afraid to let the world know that dangerous people in there, that they had converted weapons to fully automatic which incidentally is against the law; that children were being molested, and that the reporters who brought this to the attention of the world feared for their lives?

Are you afraid that the American public know that? I am asking that they be subpoenaed and for a vote on it.

Mr. ZELIFF. We put that material in the record the other day at your suggestion. We considered your request, we took it to the leadership as you suggested. They supported our decision at this point to not have first, the NRA people subpoenaed and now these people under subpoena.

Mr. MICA. Regular order, Mr. Chairman. The gentleman's time has expired.

Mr. ZELIFF. The gentleman's request is not in order. Time has expired.

Mr. LANTOS. I challenge the ruling of the Chair and I demand a vote on the ruling of the Chair.

Mr. TAYLOR. And I would remind you that the Rules of the House of Representatives do allow a majority of a committee to subpoena a witness.

Mr. ZELIFF. I will be happy to have a vote.

Mr. TAYLOR. Subpoena, yes, sir, because they are afraid for their lives, Henry.

Mr. ZELIFF. Would you state your motion at this point?

Mr. TAYLOR. Yes, sir.

Mr. ZELIFF. Mr. Lantos, you are appealing the ruling of the Chair?

Mr. LANTOS. That is correct.

Mr. SCHUMER. You have to still appeal the ruling of the Chair. Parliamentary inquiry, Mr. Chairman.

Mr. ZELIFF. State the nature of your parliamentary inquiry.

Mr. SCHUMER. Is it in order at this point in time for Mr. Taylor to make it known why certain individuals be subpoenaed?

Mr. ZELIFF. He is not recognized for that purpose.

Mr. SCHUMER. When will he be recognized for that purpose?

Mr. ZELIFF. He is recognized for 5 minutes to talk to the witnesses.

Mr. SCHUMER. Is that the ruling of the parliamentarian?

Mr. ZELIFF. That is the ruling of the Chair.

Mr. SCHUMER. Can I continue my parliamentary inquiry? When is such a motion in order? Can we ask the parliamentarian, who has been very fair—in fact, he was our parliamentarian before we lost him, and he may be again.

Mr. ZELIFF. You have put him under pressure.

It was in order under regular committee business. We are now operating under the 5-minute rule.

That is your fair, impartial answer.

Mr. SCHUMER. Continuing my inquiry, so that would mean at the start of business on Monday such a motion would be in order; is that correct? That is what I assume the gentleman is saying, the Chair is saying.

Mr. ZELIFF. This is a hearing. This is not a committee meeting in order to transact committee business. This is a hearing.

Mr. SCHUMER. Are you saying—can I please—does that mean that such a motion is never in order during this hearing?

Mr. ZELIFF. It says basically that is out of order.

Mr. SCHUMER. During the whole hearing we cannot make a request to subpoena anybody; is that what you are saying?

Mr. ZELIFF. That is correct.

Mr. SCHUMER. Then I think the gentleman has appealed the ruling of the Chair.

Mr. LANTOS. I repeat my appeal of the ruling of the Chair and demand a vote—

Mr. HYDE. Mr. Chairman, I move the gentleman's appeal lie on the table.

Mr. WATT. Parliamentary inquiry.

Mr. ZELIFF. The question occurs on the motion. The clerk will call the roll.

The CLERK. Do I call the subcommittees, Mr. Chairman—

Mr. ZELIFF. Mr. McNulty will call the roll for each subcommittee separately.

Mr. TAYLOR. Parliamentary inquiry, Mr. Chairman.

Mr. ZELIFF. A parliamentary inquiry is not in order at this stage.

Mr. LANTOS. I request a clarification. Are we voting on my motion or on Mr. Hyde's motion?

Mr. ZELIFF. On Mr. Hyde's motion to table.

The CLERK. Mr. McCollum.

Mr. MCCOLLUM. Aye.

The CLERK. Mr. Schiff.

Mr. SCHIFF. Aye.

The CLERK. Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Aye.

The CLERK. Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Buyer.

Mr. BUYER. Aye.

The CLERK. Mr. Shadegg.

Mr. SHADEGG. Aye.

The CLERK. Mr. Chabot.

Mr. CHABOT. Aye.

The CLERK. Mr. Blute.

Mr. BLUTE. Aye.

The CLERK. Mr. Mica.

Mr. MICA. Aye.

The CLERK. Mr. Barr.

Mr. BARR. Aye.

The CLERK. Mr. Heineman.

Mr. HEINEMAN. Aye.

The CLERK. Mr. Ehrlich.

Mr. EHRLICH. Aye.

The CLERK. Mr. Bryant.

Mr. BRYANT of Tennessee. Aye.

The CLERK. Mr. Souder.

Mr. SOUDER. Aye.

The CLERK. Mrs. Thurman.

Mrs. THURMAN. No.

The CLERK. Mr. Schumer.

Mr. SCHUMER. No.

The CLERK. Mr. Scott.

Mr. SCOTT. No.

The CLERK. Mr. Lantos.

Mr. LANTOS. No.

The CLERK. Mr. Watt.

Mr. WATT. No.

The CLERK. Mr. Wise.

Mr. WISE. No.

The CLERK. Ms. Jackson Lee.

Ms. JACKSON LEE. Nay.

The CLERK. Mr. Condit.

Mr. CONDIT. No.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Ms. Slaughter.

Ms. SLAUGHTER. No.

The CLERK. Mr. Taylor.

Mr. TAYLOR. No.

The CLERK. Mr. Brewster.

Mr. BREWSTER. No.

The CLERK. Mr. Zeliff.

Mr. ZELIFF. Aye.

Mrs. COLLINS of Illinois. Mr. Chairman, how am I recorded?

Mr. ZELIFF. How is Mrs. Collins recorded?

The CLERK. Not recorded.

Mrs. COLLINS of Illinois. I vote no.

The CLERK. Ex officio will vote?

Mr. ZELIFF. Yes.

The CLERK. Mr. Clinger.

Mr. CLINGER. Aye.

Mr. WATT. Parliamentary inquiry. Is this gentleman a member of this committee?

Mr. CLINGER. Just as much as Mrs. Collins is.

Mr. WATT. I don't know who is on the committee.

Mr. ZELIFF. You have to come to more meetings.

Mr. TAYLOR. You just said this wasn't a committee meeting——

Mr. ZELIFF. We are taking a vote.

The CLERK. Mr. Hyde.

Mr. HYDE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mrs. Collins.

Mrs. COLLINS of Illinois. No.

The CLERK. A very strong no.

Mr. ZELIFF. The clerk will report.

The CLERK. Mr. Chairman, on that motion the ayes are 17, the noes are 14.

Mr. ZELIFF. The majority of both subcommittees have agreed to table.

Mr. MICA. Regular order, Mr. Chairman.

Mrs. COLLINS of Illinois. Parliamentary inquiry.

Ms. JACKSON LEE. On the record yesterday I requested consideration of subpoenaing Larry Sparks. I would hope that by way of that being in the hearing record that the vote today does not impact previous requests on subpoenas. It was in the record. I made the request and the chairman presiding at that time indicated that I would receive consideration.

Mr. ZELIFF. The record speaks for itself. The committees will proceed.

Mr. MICA. Mr. Chairman, parliamentary inquiry. Yesterday I requested subpoena of certain advisors to the White House in the Clinton administration and also people within the administration, and no action has been taken on that. When would it be appropriate for me——

Mr. ZELIFF. That is not a parliamentary inquiry.



The subcommittees will now proceed.

Mr. MICA. Thank you, Mr. Chairman.

Mr. ZELIFF. The Chair now yields to the Honorable Mr. Clinger from Pennsylvania.

Mr. CLINGER. I want to point out for the record that the individuals who the gentleman from Mississippi seeks to subpoena for these hearings are the defendants in a lawsuit brought by the widows of the ATF agents who died. That I think puts us into a very, very sensitive area.

As we have learned in the past where witnesses have been called before congressional subcommittees, testimony has been used or has poisoned the well in terms of the civil suit that is ongoing. So in addition to the fact that I think it is not part of these hearings, I think the fact is that this would be delicate and could jeopardize the lawsuits ongoing.

I yield to the gentleman from Florida, Mr. McCollum.

Ms. LOFGREN. Parliamentary inquiry, Mr. Chairman.

Mr. MCCOLLUM. I believe, Mr. Chairman, I have the time.

Mr. ZELIFF. Please hold that until after he is finished.

Mr. MCCOLLUM. Mr. Secretary Bentsen, I would like to follow up with a clarification. I didn't anticipate the line of questioning you received at the beginning of this, but we have gotten off the track and I think we need to clarify this.

After you received this letter dated April 15, 1993, from Roger Altman, which described the potential use of gas at the compound at Waco and advising you that he expected you will be formally notified if Janet Reno okays it, and before you learned of the use of gas, did you have a conversation about the gas with Attorney General Reno?

Mr. BENTSEN. I don't recall that. I will tell you that at that point this was under the jurisdiction, and the raid of course, under the FBI.

Mr. MCCOLLUM. I understand. You do not recall a conversation with Janet Reno?

Mr. BENTSEN. I do not.

Mr. MCCOLLUM. Do you recall that at any time you discussed with the President the use of this gas before it was used?

Mr. BENTSEN. No, I do not.

Mr. MCCOLLUM. Let's go back to the question of the raid on February 28 which was under ATF supervision which was under your jurisdiction at Treasury at that time.

Mr. BENTSEN. That is correct.

Mr. MCCOLLUM. When did you first learn of the raid or any plan for that raid?

Mr. BENTSEN. I was in London at my first meeting with G-7 with the Ministers of Finance and was very much involved in that one. I came back, to the best I can recall, some time early Sunday morning on a night flight from London, and, in turn, I did not find out about the raid, to the best of my memory, until early Sunday evening and that is the first knowledge I had of it at all.

Mr. MCCOLLUM. In other words, there was no discussion with you, no information passed to you prior to the time of the raid that it was anticipated or that it might exist.

Mr. BENTSEN. That is correct.

Mr. MCCOLLUM. You had no idea it was going to occur?

Mr. BENTSEN. That is correct.

Mr. MCCOLLUM. Isn't it a little surprising that one of the largest raids in the BATF's history was taking place, and the Secretary of the Treasury, the chief of all of the law enforcement of the ATF was not notified?

Mr. BENTSEN. I can well understand when I was abroad attending an international meeting involving questions of monetary exchange rates and some very serious subjects at that point, that others within the Department were handling the situation.

Mr. MCCOLLUM. Didn't you keep in contact with your office during the time you were over there? Weren't there telephone calls?

Mr. BENTSEN. Of course.

Mr. MCCOLLUM. Nobody in the law enforcement division thought you ought to be disturbed about this incident and asked about it. I understand.

Let me ask a question to Mr. Cuyler. There is an indication that at one point you prepared a memorandum sent to Mr. Langan, I believe, describing the anticipated raid.

Am I correct in that? What precipitated the preparation of that memorandum, and did you deliver it? To your knowledge what happened after you did that?

#### **STATEMENT OF CHRISTOPHER CUYLER, ATF LIAISON TO THE ASSISTANT SECRETARY OF THE TREASURY**

Mr. CUYLER. Yes, sir, I prepared that memorandum and delivered it to Mr. Langan. This was ATF's advisory to Treasury that we were going to conduct a raid. After it was given to Mr. Langan, we spoke to several other officials at Treasury and provided them with a copy of it to advise them what we were going to do on Sunday.

Mr. MCCOLLUM. Did you advise that there was a potential for casualties at that raid on Sunday?

Let me ask this question first. What was the date that that was delivered? What was the date of that memorandum?

Mr. CUYLER. February 26.

Mr. MCCOLLUM. Had there, to your knowledge, been any information passed to the Treasury officials overseeing ATF about the potential for this raid prior to that date?

Mr. CUYLER. Not to my knowledge.

Mr. MCCOLLUM. My time has expired.

That may be disputable, but I see a red light, so I yield.

Ms. LOFGREN. I have a parliamentary inquiry.

Mr. ZELIFF. Please state it.

Ms. LOFGREN. Before Mr. McCollum spoke, Mr. Clinger indicated that the reporters that the gentleman in Mississippi wished to call couldn't be called because they were defendants in a lawsuit. I recall yesterday the agents who were called testified that they were also defendants in a lawsuit including Mr. Buford who was shot in the event.

The inquiry is, is it this committee's policy that those witnesses who have been sued will be excused from testifying.

Mr. SCHUMER. Will the gentlelady yield? I think she makes an excellent point. If there is anyone who is enmeshed in lawsuits, it

is Mr. Chojnacki and Mr. Sarabyn, who were called yesterday and are going to be called next week.

It augments her parliamentary inquiry.

Mr. ZELIFF. She couldn't have yielded to you in the first place, but go ahead.

Mr. LOFGREN. The inquiry is, based on Mr. Clinger's statement that those who are defendants in the lawsuits shouldn't be called, will we excuse other witnesses who are defendants in lawsuits stemming from the events in Waco since we are apparently excusing the reporters?

Mr. ZELIFF. The gentlelady did not state a parliamentary inquiry. It may be a thought to consider and a possible controlling factor, but we—at this point we are going to go to regular order.

I recognize Mrs. Thurman from Florida for 5 minutes.

Mr. SCHUMER. She had her 5 minutes.

Mr. ZELIFF. Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

First I want to thank the former Secretary of the Treasury for being brought up here. I thought the first line of questioning by my colleague from New Hampshire was way out of line, although I think Mr. McCollum's questions were on the money in terms of legitimate questions to ask. I don't think it showed anything, because let's just clarify, the memo that Roger Altman wrote was after ATF was out of the picture and Treasury was out of the picture completely.

In fact, isn't it true that there was a special effort because of the ATF problems in the first raid that Treasury and ATF were totally insulated and removed from any planning and anything that had to do with the second raid? Is that correct, sir?

Mr. BENTSEN. That is correct, Congressman.

Mr. SCHUMER. So there was an effort not to—

Mr. BENTSEN. Totally under the—at that point, of the FBI and the Department of Justice.

Mr. SCHUMER. Correct. There were two raids, as everyone knows. The first was ATF. Mr. McCollum asked the Secretary why didn't he know about it. I think that is a legitimate question. It was a way, and obviously the Secretary doesn't know about all of the things. But the second one, he had no knowledge.

Let me ask you this: Did Roger Altman have any role or any expertise in making any kind of judgment about this? Was he involved in the second raid? Was he involved in any of the planning?

Mr. BENTSEN. Not to my knowledge at all. Totally excluded from that.

Mr. SCHUMER. I would guess not. I think they wanted him miles away. So his comments here would be the comments of any layman; in other words, someone with no special knowledge at all?

Mr. BENTSEN. That is correct.

Mr. SCHUMER. He is not here, but if he were here—and I think, I must say to you, Mr. Secretary, it is terribly unfair to confront you with a memo written by Mr. Altman, your underling, and not have him here to ask him what went into the memo, et cetera.

Now I know there is a plan to bring him back, but they should have had both of you here together, and I want to just say I think it borderlines on disgraceful, the way you have been treated with

this memo and with everything else, which is no reflection on your high integrity and your standards, and I hope Mr. Altman will come back and we will be able to ask him if he had any——

Mr. ZELIFF. Point of information.

Mr. SCHUMER. I will yield to the gentleman on his time.

Mr. ZELIFF. Mr. Altman let us know at 11 last night that he wouldn't be able to be here.

Mr. SCHUMER. I understand. I think it is highly unfair to ask Secretary Bentsen about an Altman memo that has two lines in it that has many ways of interpretation without Altman being here with the Secretary.

Mr. ZELIFF. We hope to have Mr. Altman back, but the bottom line is that this Secretary was the Secretary of the Treasury at the time.

Mr. SCHUMER. I presume that is not on my time.

Mr. ZELIFF. We will give you an extra minute.

Mr. SCHUMER. Thank you.

Thank you, Mr. Bentsen, Mr. Secretary. And let me say that if Mr. Altman were here today, I would ask him if he had any special expertise on Koresh, on raids, and on these things, and I would bet the record would show, as it will next week, that he would say "no." So he was just giving his own little guess; he is an assistant secretary, or a deputy secretary, on what would happen. We don't even know what kind of tragedy he envisions here at all.

Let me ask you, go back to the first round. You were in charge now, of course, after the first raid occurred where four agents, four brave agents, died. You, of course, did know and were involved. Let me ask you this, because your reputation for integrity is unquestioned in this town, sir.

Two questions. The first is: Do you have any doubt that the report that was done under the Treasury Department's supervision but with outside observers first was an honest and complete endeavor to get to the bottom of the tragedy? And, second, do you have any doubts that there was no effort to slant the truth, change the truth, cover up the truth in any way?

Mr. BENTSEN. No doubt whatsoever. And let me tell you how far I went, because I was seeking the truth at that point too and wanting to see what changes had to be made insofar as the format of Treasury.

What you saw in that situation was a group of dedicated, sincere people who had some errors in judgment, and there is no question about that, and that is cited in the report. I went so far as to get some outside people to be on that review board who I thought their integrity would be unquestioned. They were Mr. Williams, who was chief of police of the Los Angeles Police Department; Mr. Henry Ruth, who was prosecutor at the Watergate hearings; and Mr. Guthman, who is a Pulitzer Prize scribe.

Now here is a letter from them and what they have said, and this is dated May 25 of this year to Speaker Gingrich:

One of the many falsehoods being circulated is that ATF's actions at Waco never were investigated fully. Quite the contrary. The Treasury's critique was thorough and sparing and honest. More than 30 attorneys, investigators, support staff joined 10 experts in firearms, explosives, and tactical operations in a five-month probe to learn the truth. The experts were not paid, nor were we. We oversaw the investigation, participated in writing the report which the Wall Street Journal characterized

as extensively detailed and the Los Angeles Times said was courageous, candid evaluation.

In addition to that, you have had four separate congressional committees that have investigated this to seek the truth. We have all worked at that. I think that has been accomplished.

Mr. SCHUMER. Just one final "yes" or "no" question.

Mr. ZELIFF. Regular order.

Mr. SCHUMER. Are we changing the rules, Mr. Chairman? You have been lenient with an extra 10 or 30 seconds.

Mr. ZELIFF. Wait a minute. Are you questioning what I am about to do?

Mr. SCHUMER. No, not yet.

Mr. ZELIFF. Are you going to let me do it?

Mr. SCHUMER. Please.

Mr. ZELIFF. I know that you are a showman from New York.

Mr. SCHUMER. I am trying to get the truth.

Mr. ZELIFF. I will give you this last question in terms of fairness. I said I would give you an extra minute. There may be questions on my side whether I am being too generous, but please make it short.

Mr. SCHUMER. Thank you. I appreciate your fairness because I, like you, am trying to get at the truth.

Mr. ZELIFF. Thank you.

Mr. BUYER. With a spin.

Mr. SCHUMER. Right. Something you never do, Mr. Buyer. No politician ever does that.

Mr. ZELIFF. You are going to take all your time.

Mr. SCHUMER. I would ask you, Mr. Secretary: You have listened to the 2 days of hearings that have occurred so far. To your knowledge, has any material fact, any new material fact that you were unaware of before, come out in these hearings?

Mr. BENTSEN. What I have heard at this point, no new material fact.

Mr. SCHUMER. Thank you.

Mr. ZELIFF. Thank you very much. Your time has expired.

I am glad we have an openmind for looking for the truth from new material that may or may not come out or has come out.

Mr. Hyde from Illinois, please.

Mr. HYDE. Thank you, Mr. Chairman.

Mr. Simpson, do you know of anybody at Treasury who had knowledge of this raid before February 26?

#### **STATEMENT OF JOHN SIMPSON, FORMER ACTING ASSISTANT SECRETARY OF THE TREASURY**

Mr. SIMPSON. No, sir, I do not.

Mr. HYDE. Mr. Higgins, do you know of anybody at the Treasury Department who had knowledge of this raid before February 26?

#### **STATEMENT OF STEPHEN HIGGINS, FORMER DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. HIGGINS. I don't know of anybody in the current administration. I believe a briefing paper went over with respect to opening the investigation sometime in June 1992, but I don't know of any-

body in the current administration who did, but that doesn't mean they didn't.

Mr. HYDE. You just don't know then; is that your answer?

Mr. HIGGINS. I hope that is what I said.

Mr. HYDE. OK.

Mr. Cuyler, do you know of anybody at Treasury that knew of this raid that happened on the 28th before the 26th—knew it was going to happen before the 26th?

Mr. CUYLER. No, sir.

Mr. HYDE. Mr. Langan, do you know of anybody at Treasury who knew of this raid before February 26?

Mr. LANGAN. No, sir.

Mr. HYDE. Secretary Bentsen, do you know of anybody at Treasury who knew of this raid before February 26?

Mr. BENTSEN. Mr. Chairman, no, I do not know of anyone, and that is the sort of thing that had to be corrected, and that is what I set about to do, to see that it didn't happen in the future, and at some point I would like to have the opportunity of saying what we have done to correct it.

Mr. HYDE. Well, I am sure you will be given that, and I hope you are, Mr. Secretary.

I well remember that the newspapers and Democrats had a fiesta over the fact that they let President Reagan sleep one night when some very controversial event happened overseas and they didn't wake him up, but here you are in London attending to monetary affairs, and I know, God knows, they are important, and here is a massive raid, an unprecedented raid on a religious group out in the plains of Texas, and they didn't bother to tell you about it. That is something that deserves looking into.

I read an article by a man named Dean Kelly who is an official of the National Council of Churches, not exactly a bastion of conservatism, and he described the march on Waco: Two unmarked cattle trailers drew up in front of the building at Mount Carmel and disgorged more than 70 agents dressed in dark commando costumes, complete with ski masks, and carrying guns, who raced toward the buildings in several groups shouting and, he says, at some point shooting.

David Koresh, unarmed, opened the front door before they reached it and called, "What do you want? There is women and children in here."

The lead agent claimed to have yelled "Police. Get down," or some such cry, and Koresh closed the door. Shortly thereafter, heavy firing broke out, it says, from both sides. Who fired first and at what remains a matter of sharp dispute.

Two teams of ATF agents with ladders mounted to the roof of the first floor and broke into the windows of the second floor where they believe the weapons were stored. They met with heavy fire, which resulted in several casualties. One team did not make an entry, but the other did. Its members were not able to advance, however, and the effort failed.

Firing continued from both sides for some time, with the agents pinned down behind their vehicles and other cover until the cease-fire was negotiated.

Is that substantially correct, Secretary, from your study?

Mr. BENTSEN. No, that is not correct from our study.

Mr. HYDE. Would you tell me where it is incorrect?

Mr. BENTSEN. It is incorrect from the study insofar as who did the firing first.

Mr. HYDE. The claims are that Koresh fired first?

Mr. BENTSEN. The claims are in the study.

Mr. HYDE. You mean 70 SWAT team people were there with guns and ski masks and he got nervous and shot?

Mr. BENTSEN. And did not choose to shoot first.

Mr. HYDE. They did not shoot first?

Mr. BENTSEN. That is right.

Mr. HYDE. All right. But other than that, it is substantially correct?

Mr. BENTSEN. Well, I think it——

Mr. HYDE. From your exhaustive studies?

Mr. BENTSEN. It portrays it as a type of assault, which it was not. They came to try to serve peacefully the warrants.

Mr. HYDE. With ski masks and 70 SWAT team members?

Mr. BENTSEN. And they were ambushed in the process.

I saw a situation of some very dedicated people, some very courageous and disciplined people, who tried to carry out the orders of what they thought was the law insofar as the assembly of machine-guns and the explosives. That they did.

I saw a situation where you had a medic trying to cover and help some of the wounded and was continued to be held under fire and had a medical bag he was trying to utilize to help shot out of his hands with a 50-caliber gun. That is what they were subjected to.

Mr. HYDE. This same article says a mile-long convoy of 80 Government vehicles with their headlights on, including 2 covered cattle trailers containing over 70 ATF agents in full SWAT gear reached the staging area at Bellmead on the edge of Waco at 7:30 a.m. Two helicopters supplied by the Texas National Guard warmed up at the command center.

Well, this was quite an operation, and I am just disappointed that your people didn't let you know even though you were in London; there are pretty good telephone and radio connections, as I recall; and that seems to me a shame.

Well, thank you. My time is up.

Mr. ZELIFF. Thank you, Mr. Hyde.

The Chair now recognizes Mr. Scott from Virginia for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

I would like to ask Secretary Bentsen a question. The initial raid obviously resulted in loss of life of four agents and several of the residents. What did the Department of Treasury do after this to ensure to the best of your ability that that wouldn't happen again?

Mr. BENTSEN. What I did was immediately setting up a review commission and bringing in outside experts to see just what had happened. They went into great detail. It took them some 5 months to complete that investigation and then report to me and to the President.

In addition to that, I had the inspector general checking to see that they were carrying out the format of the study in that we assembled some 17 senior investigators from the Secret Service, the Customs Service, the IRS, and the Financial Crimes Enforcement

Network to assist with the interviews, the preparation of the report, and no ATF personnel took part in that review.

We brought in 10 outside Treasury experts to give us further information on the tactical operations, firearms, and explosives, and all of them, like the independent reviewers, served without pay.

I must say that the ATF group gave total cooperation into this type of a review. We interviewed more than 500 individuals between May 17 and the publication of the report, and most of those interviews were done in person.

The Waco report was praised for its frank accounting and analysis of events. Treasury's Inspector General, the independent reviewers, gave it that support. The media supported it as to what it had done.

Now, let me say, corrective actions have been taken. Once it was published, numerous personnel changes were made both in Washington and in the field. The leadership at the ATF was replaced. Secret Service Director John Magaw, 34-year veteran of law enforcement and a known reformer, succeeded that position. Three ATF officials were placed on administrative leave. The Associate Director for Law Enforcement, Mr. Hartnett; the Deputy Associate Director for Law Enforcement, Mr. Conroy; and the Chief of the Intelligence Division, Mr. Troy. Two of those chose to retire, the Intelligence Chief was demoted, and the two raid commanders were relieved of their law enforcement duties. They no longer wear badges, carry guns, or supervise line agents. These are the things that we did.

Now, remember, these people broke no law in their attempt to execute lawful warrants. They were disciplined for errors in judgment and their faults and misleading statements following that raid. We certainly took the action, and we learned some lessons in the process.

What we have done—it revealed a pattern of inadequate oversight by main Treasury and insufficient communication between the Office of Law Enforcement and the bureaus it is charged with supervising. We have enhanced the formal and informal communication between the Office of Enforcement and the bureaus. We now have a Treasury Law Enforcement Council which consists of directors of each law enforcement bureau.

I am talking like I am still Secretary. Sorry about that. But those are the actions that we took to try to be certain this never happened again.

Mr. SCOTT. Mr. Chairman, I yield back the balance of my time.

Mr. BENTSEN. I apologize for using all your time.

Mr. GREEN. Thank you, Mr. Chairman.

I would like to thank my colleague, Congressman Scott from Virginia.

Mr. Secretary, I have considered you my friend for many years. You had a distinguished career in this House and in the Senate and in the administration.

Mr. BENTSEN. I am glad you worked it in that I was in this House, too.

Mr. GREEN. For a couple of terms in the early 1950's, late 1940's. You understand what we are doing; Congress is Monday-morning quarterbacking, and that is what our job is. These officers, ATF



doesn't want us out there on the line to make those decisions because we are not trained for that. We are looking for what has been done and what could be done to make sure it doesn't happen again, and your responses to Congressman Scott talked about the disciplining of the agents.

Even yesterday those agents who were disciplined said 70 percent of this report was correct, and that is from the agents who were relieved of duty, again reinstated, but 70 percent. If I could get that from someone I disciplined, I would consider that a winner.

Let me point out that our honorable chairman of the Judiciary Committee talked about the agents coming out in ski masks. The witnesses at that table yesterday said there were no ski masks, none of them. Mr. Buford, who was there and actually compared the fire that he received as a veteran of Vietnam to what he received there at Waco. But there was no ski masks. So let's put that article to rest, that there was no ski masks out there, because we have sworn testimony to that effect.

Thank you, Mr. Chairman.

Mr. ZELIFF. Thank you very much.

Mr. BENTSEN. Let me say, as one who has been under combat fire, I understand the courage and the discipline that was exercised by those agents.

Mr. ZELIFF. Ms. Ros-Lehtinen from Florida.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

I will soon yield the remainder of my time to Mr. Schiff, but before I do, I confirmed this morning that my NRA rating was D-minus last year. I don't think that the NRA considers me exactly to be a sterling legislator on their issues. I voted on a procedural measure on the crime bill, I voted for it, the NRA was on that side, so I ended up with a D-minus and not an F. But the NRA is in no way, as you can imagine, tainting me in this hearing. The NRA is not guiding my questions.

The minority this morning again continues to try to divert attention from the real issues of the hearing, and the liberal press may play along with this "bashing the NRA" hysteria, but this side will continue to seek out the truth so that Government agents will no longer in any way be in harm's way ever again.

I am concerned about this misguided raid, the poor supervision, the lack of proper procedures being followed, and those are the real issues that our side will continue to hammer away at every day.

I yield the remainder of my time to Mr. Schiff.

Mr. SCHIFF. I thank the lady for yielding.

I would like to continue for a moment under the lady's train of thought here. I truly regret the President of the United States' remarks as quoted in the paper that the mistakes by Federal law enforcement somehow excused the depravity that took place inside the compound. I view the situation as the opposite. I think there are those that are arguing that Mr. Koresh's personal depravity somehow excuses law enforcement errors.

I want to further take a moment and say—to clarify the issue that was the subject of most of yesterday's hearing about the role of the military in law enforcement. I do so because in addition to being a Member of Congress I have a background in military law.

I want to say I happen to agree with those who say that the Posse Comitatus Act, the Federal law that restricts the Federal military from engaging in civilian law enforcement, was not violated. I personally have not seen evidence that it was violated. But there was a serious breach of military policy that occurred.

General Pickler, commander of Joint Task Force Six, had an antidrug mission and an antidrug mission only. In order for the Bureau of Alcohol, Tobacco and Firearms to have gotten assistance through Joint Task Force Six that they did receive, they had to turn their mission into a firearms mission—which is what it was, according to Mr. Chojnacki who headed the mission—into an antidrug mission to take down a methamphetamine lab.

So, in other words, in order for the Bureau of Alcohol, Tobacco and Firearms to have obtained the military assistance they did receive, not because of the Posse Comitatus Act but because of existing military policy, they misrepresented to the military that this was an antidrug raid when it was never an antidrug raid.

With that clarification, with the time I have left, Secretary Bentsen—thank you for being here—I would like to ask you something, please. You stated that two supervisory agents were discharged as a result of the Treasury Department's investigation. I believe you mean Mr. Chojnacki and Mr. Sarabyn; is that right, sir?

Mr. BENTSEN. Would you give me those names again.

Mr. SCHIFF. I believe the correct pronunciation is Mr. Chojnacki and Mr. Sarabyn. I believe they were the two agents who were discharged.

Mr. BENTSEN. Yes. Well, they were put on administrative leave, and then it was left, as I recall, to the administrator to take such action as was necessary. Then, as I recall, they appealed to the Merit Protection Board, and a compromise was worked out, but they were denied supervision of line officers, they lost their badges, they could not carry a gun, they were demoted.

Mr. SCHIFF. They were essentially fired but then reinstated under those circumstances. Is that a fair summary?

Mr. BENTSEN. Reinstated with limitations.

Mr. SCHIFF. Yes, sir. That is what I meant to say. The proceedings under which they appealed their termination and were reinstated with those limitations, is all of that public? Is that public? Are those documents publicly available?

Mr. BENTSEN. Congressman, I don't know.

Mr. SCHIFF. I wonder if any member of the panel knows if the documents of the hearing of the appeal by these terminated agents which resulted in their limited reinstatement is publicly available. Can any member of the panel answer that?

Thank you very much.

Mr. Chairman, I just want to say, in the search for documents, I hope we can get a copy of those hearings also.

Thank you, Mr. Chairman. My time is up.

Mr. ZELIFF. Thank you.

The Chair yields to Mrs. Collins of Illinois.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman.

Mr. Higgins, when were you first appointed Director of the ATF?

Mr. HIGGINS. I acted as Director from 1982 until 1983. I was appointed permanent director in 1983.

Mrs. COLLINS of Illinois. Were you appointed by President Reagan?

Mr. HIGGINS. Actually by the Secretary of the Treasury, but it was under the Reagan administration.

Mrs. COLLINS of Illinois. Thank you.

During the time you served as Director, what exactly did you know about the Good Ol' Boys Roundup in Tennessee?

Mr. HIGGINS. I knew nothing about nor did I attend, as some have claimed, although I am not sure what that has to do with this hearing.

Mrs. COLLINS of Illinois. I think it has a lot to do with it. As a matter of fact, it is my understanding that the Good Ol' Boy Roundup was sort of a syndicated secret within the ATF. So I want, you know, to make sure. It is your testimony that no one ever mentioned anything at all to you about the Good Ol' Boys Roundup; is that right?

Mr. HIGGINS. That is my testimony. I remember nothing about the Good Ol' Boys Roundup. In 10 years if somebody said it, I am not going to say they didn't, but I don't remember anything. I never attended. I certainly never heard of anything that was anywhere near any racist activity.

So I have submitted a statement to the Senate, which I believe is having hearings today, that I know nothing about the Good Ol' Boys Roundup.

Mrs. COLLINS of Illinois. Were you ever aware of any racist discrimination within the ATF in the 10 years that you were there or any allegations of it by African-Americans or other minorities?

Mr. HIGGINS. With respect to racial discrimination within the Bureau just generally?

Mrs. COLLINS of Illinois. Yes.

Mr. HIGGINS. Yes; we had cases from time to time. I know over my 10-year career we would have people allege they were. Some would be investigated and found that they had, in fact. Others would be investigated and found there was no basis. There was also a group of agents who I believe now have a class action lawsuit, or I am not sure what the status of it is, but I think that is the case.

Mrs. COLLINS of Illinois. According to an African-American ATF agent, the Good Ol' Boys Roundup is merely a symptom of the larger problem of racism that has existed for some time within the ATF. And you say that you were never at any point made aware of that kind of symptomatic racism?

Mr. HIGGINS. Yes.

Mrs. COLLINS of Illinois. Well, you knew of cases that had been looked at and allegations that had been made?

Mr. HIGGINS. Yes, but I think your question is, do I think that there is some sort of symptomatic system of racial discrimination within ATF, and that is not my understanding of what happens in ATF. The fact that someone believes it is, is certainly their right and can file a suit and has probably—

Mrs. COLLINS of Illinois. Did some of the suits find that there was racism?

Mr. HIGGINS. I am sure there have been, yes. We have had suits charging racial discrimination, sexual discrimination, a number of cases.

Mrs. COLLINS of Illinois. On your watch?

Mr. HIGGINS. On my watch and everyone else's. Not my watch anymore, but I am sure they are still being filed.

Mrs. COLLINS of Illinois. While you were in charge?

Mr. HIGGINS. Yes.

Mrs. COLLINS of Illinois. What steps did you take to try to erase the racism that was there while you were there?

Mr. HIGGINS. I met with the agents, beginning with a small group of agents who were concerned about discrimination in ATF, I think going all the way back to when I took over as Director and maybe when I was Deputy Director. We were able to implement a lot of the things that they wanted, and I hope if they are being honest they will admit that.

We also could not completely satisfy——

Mrs. COLLINS of Illinois. What were some of the things they wanted?

Mr. HIGGINS. They wanted an ombudsman, for example, to appoint a black agent, so if they had a problem, that person could come directly to me and make that case for them. I appointed that person to do that.

I appointed a black woman as the head of the Office of Equal Opportunity, and I think if you want to question her, I think she will tell you that we had a commitment.

Did we satisfy everyone? No, obviously not.

Mrs. COLLINS of Illinois. Some of the critics have implied that the raid on Waco was motivated by ATF's need for publicity and that the reasons sometimes vary but the more popular version included a desire for a high profile event just before scheduled congressional hearings and the need to draw attention away from adverse publicity that ATF feared about some pending personnel complaints. Are you aware of that?

Mr. HIGGINS. My short answer to people who feel that way is, that is a very callous, cynical charge with respect to how people who have given their life, caring, and being concerned about the welfare of the men, women, and children, both those inside the compound and everywhere else.

To imply that those were the motives, I think, is a tremendous disservice to any of us who were there.

Mrs. COLLINS of Illinois. Did you at any time prior to the raid believe that the attempt to serve the warrant by dynamic entry was likely to lead to a gun battle and therefore casualties to ATF agents and civilians?

Mr. HIGGINS. Absolutely not. I think the planners will tell you that in planning any raid plan, if any of the planners or myself believe that even one person is likely to be injured or killed, we will look for another plan.

Mrs. COLLINS of Illinois. Well——

Mr. ZELIFF. Your time has expired.

The Chair yields to Mr. Coble of North Carolina.

Mr. COBLE. Mr. Chairman, I yield 5 minutes to the gentleman from Georgia, Mr. Barr.

Mr. BARR. I thank the gentleman for yielding.

Earlier we heard that the gentleman from New York feels that there is nothing new. I think he repeated it several times. While he may believe that, and while the New York Times may agree with him, people out in the country frankly don't care what a newspaper from New York thinks about.

There is important information coming out of these hearings, including information concerning directives from both the Department of Justice and the Department of the Treasury to stop ATF's initial inquiry into what happened, what went wrong on February 28.

There are also court orders, including provisions insisted on, according to testimony yesterday by the Department of Treasury, that documents and personnel files of two of the ATF agents intimately involved with the initial raid and which relate explicitly to that initial raid and the shooting review that was conducted or attempted to be conducted shortly thereafter be destroyed, not just removed from the personnel files with the Merit System Protection Board, but destroyed.

We heard from witnesses that such a demand in a hearing like that or in a court proceeding like that by anyone, much less a department of the executive branch insisting on such a provision, is not only highly unusual but, in the opinion of the witnesses yesterday, including those very familiar with MSPB proceedings, has never been heard of before.

Now, these things, perhaps not in the eyes of a particular newspaper or in the eyes of the Congressman from New York, do raise very legitimate, serious questions, and it is unfortunate that others have no concern with the directives that we have seen.

What I would like to request is, if Mr. Bush could distribute document Nos. 0013428 and 0013430, which are settlement agreements for Charles Sarabyn and Phillip Chojnacki before the Merit System Protection Board, and referencing paragraph 14 therein, specifically that any documents in these files relating to or concerning disciplinary action will be removed and destroyed, and also referencing previous language in those two settlement agreements in paragraph 12 that documents filed by the parties be withdrawn; and I would especially appreciate, Mr. Secretary, your reviewing those particular provisions that I think are summarized accurately, whether you are familiar with those and if you, in fact, have any knowledge of where in the Department of the Treasury the insistence that those provisions be included as part of the settlement agreements came from.

Mr. BENTSEN. My understanding is that there was no request by Treasury that records be destroyed, none, quite to the contrary to what you have stated, and that copies of the documents to which you refer have been retained by Treasury and produced in these subcommittees.

Mr. BARR. OK. Then if a witness, as the attorney representing one of these individuals yesterday testified under oath stated that it was specifically at the directive, request, and demand of the Department of the Treasury that that language be included, he would be lying?

Mr. BENTSEN. I am telling you what Treasury has advised me.

Mr. BARR. And I heard you when you said that, and I appreciate that. So you would say that the testimony yesterday that I have just summarized for you——

Mr. BENTSEN. I didn't see that, and I would want to see that in detail. But I can tell you Treasury absolutely denies having such records destroyed.

Mr. BARR. So as far as you know then, the Department of the Treasury made no such request, demand, or insistence?

Mr. BENTSEN. That is what I have been advised.

Mr. BARR. OK.

Mr. Higgins, if I could direct your attention to a number of memos, and, Mr. Bush, if you could distribute those to Mr. Higgins, No. 18994, No. 17722, and No. 19941, all of which relate to—Mr. Bush, if we could get those distributed to Mr. Higgins right away, please.

These documents, Mr. Higgins, emanate from the Department of the Treasury.

Mr. ZELIFF. It has been the policy of these hearings to allow someone to finish the question before we call him out of time.

Mr. WISE. Mr. Chairman, that is not my—no, sir, I am not arguing about the time. I am saying that we are hearing about a lot of documents that are not being distributed down here.

Mr. ZELIFF. OK. Can we see that they are also distributed on the minority side? And I will hold up for a second until they are.

Mr. BARR. No; I was going to say, Mr. Chairman, these are documents that have been inserted already in the record on at least two occasions.

Mr. ZELIFF. This side has better access to documents than we do.

Mr. WATT. Mr. Chairman.

Mr. ZELIFF. You are going to have an index.

Mr. WATT. Parliamentary inquiry, Mr. Chairman. Parliamentary inquiry.

Mr. ZELIFF. Mr. Barr has the time.

Mr. WATT. Mr. Chairman, I demand regular order.

Mr. ZELIFF. That is regular order.

Mr. Barr.

Mr. WATT. Mr. Chairman, that has not been the policy of this committee. The policy of this committee up to this point in the process is——

Mr. ZELIFF. You are out of order, Mr. Watt.

Mr. WATT. I demand regular order, Mr. Chairman.

Mr. BARR. Mr. Higgins——

Mr. ZELIFF. What we have done is let—go ahead and finish your question, and then——

Mr. WATT. Mr. Chairman, that has not been the policy up to this point. It has been the policy to allow the witnesses to testify after the red light has gone off but not to allow questions to start after the red light has come on. That has not been the policy up to this point, and I object and demand regular order.

Mr. ZELIFF. Regular order has been demanded. Please finish up your question.

Mr. BARR. OK.

If you could, Mr. Higgins, regarding these documents which seem to indicate very explicitly that after the start of the initial shooting

review which was required, as I understand it, pursuant to ATF procedures and guidelines to determine whether or not the shooting that occurred on February 28 was appropriate, in accordance with regulations, et cetera, that after that started and Department of Justice attorneys were beginning to interview and ATF agents were beginning to interview people concerning that shooting review, that directives came down from, among others, Deputy General Counsel Robert McNamara, directing that witnesses not be interviewed, that they be ceased, and that no notes be taken.

Could you explain why such directives were given?

Mr. HIGGINS. I can't. I know who McNamara is, but I have no idea why he gave that instruction or direction.

Mr. BARR. Is that standard procedure?

Mr. WATT. Regular order, Mr. Chairman.

Mr. ZELIFF. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

I am delighted to see the former Secretary here and wish him well in his new endeavors.

Could you review for us, Secretary Bentsen, the whole question of racial discrimination and activities related to the Ol' Boy Round-up.

I have talked to Secretary Rubin, who will be testifying here very shortly, and what I see is very important, and the members of the Congressional Black Caucus and many of our friends in the Congress, is that we make sure since Waco had to have been gone into—something that we did not think was necessary, parenthetically—we have the awful Oklahoma City bombing, and out of that comes a hearing on Waco as opposed to a hearing on the militiamen, many of these dangerous armed organizations that are existing around the country.

But nevertheless this question has to be addressed and moved forward on, and I would like you to relate to us any information and any activities that you may have helped put forward to promote better policies to end the racial discrimination that has been endemic in many of our law enforcement organizations.

We have been fighting—the problem of oppressive racial activity within the FBI; the Immigration and Naturalization Service; Alcohol, Tobacco and Firearms; the Drug Enforcement Administration for many, many years, and I think that this would be a good opportunity for us to discuss this from your frame of experience in the Treasury.

Mr. BENTSEN. Mr. Congressman, one of the first votes that I cast in this body, in the House, was in 1949 to do away with the poll tax, and I will tell you, the only two in the whole Texas delegation that voted that way, and that was like blood on the moon in those days, so I have a long history. I have supported civil rights and opposition to racial intolerances. That is my rearing, and that has been my legislative record, and I supported that as Secretary of the Treasury, and if you look at the gentleman that is the Assistant Secretary of Treasury Enforcement, it is a man who belongs to the minority, and that is one of the most critical positions in Treasury today, to try to say that we do not have racial discrimination.

I think what I have seen of the pictures of these meetings is absolutely outrageous, certainly has no support of any kind by Treasury, none.

Mr. CONYERS. Well, I would have expected you to say that, knowing you for so many years.

The problem that I am confronted with, Secretary Bentsen, is the fact that the Ol' Boy Roundup, which wasn't the first one that occurred, is really something I consider to be symptomatic of an environment rather than the problem. I am sure all of the officials in ATF are going to make sure that never occurs again.

By the way, there were other law enforcement officers present that were not ATF. There were some from FBI and other parts of our Government.

But what I think we need to emphasize is, excising that tragic activity that occurred in Tennessee from any future occurring again doesn't change the environment out of which it grew, and that to me is a very deep concern. That is to say that where this could flourish, there may and must be other kinds of practices that need to be rooted out within the Alcohol, Tobacco and Firearms. We need to look more carefully, and we will be talking with Ron Noble, a good friend of mine.

But the fact of the matter is that pulling one weed out of the lawn doesn't mean that we are not going to have anymore problems, and what I need to do and want to make sure that ATF and everybody else in every law enforcement operation understands is that we have got to go to the environment.

Mr. BENTSEN. My successor, Secretary Rubin, has launched an inspector general investigation, and that in turn will be reviewed by an outside board of inquiry.

Mr. ZELIFF. The gentleman's time has expired.

I would just like at this point to clarify the Chair's policy on time, and I think that was a good example. You were in the middle of asking a question; we gave you an extra minute to finish it. It was a good thought.

I would like to just make a comment that those management practices that you were questioning, we are trying to question, too; we are trying to get at the bottom, what led to the core of some bad decisions, whether it be racial problems or the roundup stuff or the decisions to go in and not go in. These are the things that we are trying to do, and I credit the gentleman for his comments.

Mr. CONYERS. I thank the chairman.

Mr. WATT. Mr. Chairman, parliamentary inquiry.

Mr. CONYERS. As we know, Mr. Chairman, Secretary Rubin will be here to testify.

Mr. ZELIFF. I would just like to say, what I was trying to do is, if there is a question such as what you made, it is my intention to let you continue to finish your question; it is also my intention to let the panel answer that question within reason.

Now, if anybody on this side of the aisle—and I would certainly be willing to listen to Mrs. Thurman, Mr. Schumer, you, or Mrs. Collins—anybody has a complaint that thinks we are dealing unfairly, we will be happy to deal with it.

Mr. WATT. Parliamentary inquiry, Mr. Chairman.

Mr. ZELIFF. Please state the nature of your inquiry.



Mr. WATT. If the rules are not being complied with, doesn't any member on the panel have the right to raise that as an issue?

Mr. ZELIFF. Yes.

Mr. WATT. Then do you distinguish—further parliamentary inquiry—between a question that is in process when the red light comes on and a question that starts after the red light comes on, which is exactly what I have been doing when we try to interrupt anybody who started a question before the red light came on. Mr. Barr started his question after the red light came on.

Mr. ZELIFF. I disagree with you, my friend.

Mr. WATT. Not during the time that the red light—

Mr. ZELIFF. I think I opened myself up by saying that I mentioned four of your leadership over here. If anybody thinks we are dealing with it unfairly, we will be happy to sit down with them. At this point I would like to recognize Mr. Buyer from Indiana for 5 minutes.

Mr. BUYER. Thank you. Thank you, Mr. Chairman.

One thing—I would yield to my friend from Florida, but I wanted to make a comment quickly. One is that it does bother me, and some of the comments from Mr. Schumer yesterday and when I read the Washington Post today about the President's comments about no moral equivalency, is the ends does not justify the means; the ends does not justify the means.

I think it is important to note that I think David Koresh was a very bad person, ugly, could be tried for murder, firearms, child molestation, but this whole thing about the ends justify the means is not the way we conduct the civil process and criminal process.

I think, Secretary Bentsen, that is why you set about with great sincerity for your investigation, because I know you are a man of integrity and you don't believe that ends justify the means, my following of you over the years.

One thing—I do have a question for you, Mr. Bentsen—is that earlier in a question you said that you have heard of no new material facts from this hearing. We have had—during the first day we went almost 12 hours; the second day we went about 12 hours. Did you sit and listen to all of these hearings?

Mr. BENTSEN. No; I certainly did not. I said with what I heard, I had not heard anything—

Mr. BUYER. And how much of these hearings have you heard?

Mr. BENTSEN. Fortunately, not a lot.

Mr. BUYER. Fortunately not a lot. I think that is very important to clear up.

I yield to the gentleman from Florida.

Mr. MCCOLLUM. Thank you, Mr. Buyer, very much for yielding.

I would like the memorandum of Mr. Cuyler to Mr. Langan passed out, if we could. I believe all the members of the committee have that memorandum. This is the memorandum I referred to earlier, Mr. Cuyler, that you prepared. You told us you submitted it to Mr. Langan on February 26 before the raid, as I recall.

In your testimony earlier, you indicated that to your knowledge this was the first time that Treasury officials had been notified of the raid itself. Tell us what your title and role was at the time, as well as what Mr. Langan's was. Can you tell us that?

Mr. CUYLER. Yes, sir. I was ATF's liaison to the Department of Treasury, and Mr. Langan was—on February 26 I believe he was the Acting Deputy Assistant Secretary.

Mr. MCCOLLUM. Who provided you with the information in the memorandum?

Mr. CUYLER. I gathered this information from a briefing I attended on February 11 from Mr. Chojnacki, Mr. Sarabyn, Mr. Aguilera.

Mr. MCCOLLUM. At whose direction did you prepare the memo?

Mr. CUYLER. At no one's direction. I prepared it myself. On February 26 it was very difficult to get in to see people at Treasury, because that is the day the World Trade Center bombing occurred and they were quite busy checking on—there were a lot of Treasury assets up in New York.

Mr. MCCOLLUM. Why did you wait until February 26 to prepare a memorandum and submit to Mr. Langan? Why did you wait until that date to notify them?

Mr. CUYLER. I was directed by my Associate Director at the time, Mr. Hartnett, to brief them that day. That is also the day that the change occurred, moving it from March 1 to February 28. So nothing was final prior to that time.

Mr. MCCOLLUM. All right. At some point did you brief Mr. Simpson and Mr. Langan about the raid personally?

Mr. CUYLER. Yes, I did.

Mr. MCCOLLUM. What precipitated that?

Mr. CUYLER. I had spoken to Mr. Noble, and Mr. Noble indicated to me he appreciated the briefing but he was in a designee capacity and had no operational authority and directed me to brief Mr. Simpson and that I might also mention it to Mr. Steiner and Mr. Deal.

Mr. MCCOLLUM. Thank you.

Mr. Higgins, I want to ask you, since this was the largest raid in ATF history, why you as the Director did not personally inform the Treasury Department officials? Why was this the only way this information apparently got there other than the original notice in 1992?

Mr. HIGGINS. Everyone likes to say they were out of town. I was out of town for the week immediately preceding the raid. When I got back on Friday the 26th, almost just in passing I said, well, I assume somebody has notified Treasury, because the raid had been moved up. They said they would check and find out, and we found out they had not.

Mr. MCCOLLUM. You chose not to earlier either. What were the defects, Mr. Simpson, in Mr. Cuyler's memorandum that led Mr. Noble to advise you? I presume that you did subsequently then act on that advice concurrent or whatever to cancel the raid. I understand you did cancel at the beginning, and then reinstate it. What were the defects that you saw in that memorandum that you have in front of you, or the considerations?

Mr. SIMPSON. Well, Mr. Chairman, we had a bit of a discussion with Mr. Noble, and also Stan Morris, who was an adviser to Mr. Noble and had been the head of the U.S. Marshals Service. They had very strong views with respect to the ATF proposal, and they also had substantially more experience in this area than I did. So

out of deference to the strength of their views and the long experience that they had in this area, I called Mr. Higgins and told him to cancel the raid.

Mr. MCCOLLUM. So there was nothing particularly in the memo itself, it was the advice that you got?

Mr. SIMPSON. That is correct.

Mr. MCCOLLUM. Thank you.

Mr. ZELIFF. The gentleman's time has expired.

Mr. Watt from North Carolina for 5 minutes. I was told by your side that the time was to be given to Mr. Watt. You will be next.

Mr. WATT. Mr. Chairman, I yield 2½ minutes to Mr. Green and 2½ minutes to Mr. Schumer.

Mr. GREEN. I thank my colleague from North Carolina for yielding me the time.

Mr. Secretary, yesterday my colleague from Georgia, Mr. Barr, talked about a settlement agreement between Mr. Sarabyn and the Department of Treasury, and I believe he gave you a copy of this this morning.

Mr. BENTSEN. I have not had an opportunity to read it though, with the questioning going on.

Mr. GREEN. OK. Let me direct your attention—and it probably would have been better to ask the attorney yesterday for Mr. Sarabyn who handled his case with the Merit System Protection Board. But on page 6 I think the concern that Mr. Barr has is, on the fifth line it says any documents in these files relating to or concerning disciplinary action be removed and destroyed. In your testimony this morning you said there was no request from Treasury for that.

I guess I was looking at this and reading the totality of the document, and particularly with item 15, have you ever heard of a Merit System Protection Board having the authority to remove or destroy documents that were involved in a criminal proceeding?

Mr. BENTSEN. Congressman, I really have no detail on that.

Mr. GREEN. I guess that is what is happening today. We are in; and I have watched the last 2 days; there are documents being given to people and asking to respond to them without even having time to read them ahead of time, and this is a great example of that.

But after you maybe read it for a day or so—you can refresh your memory or even this—you don't have a memory on it, because it never came to your attention.

Mr. BENTSEN. I would say I never received a detail of that.

Mr. GREEN. I think that is the concern that some of us have in watching the questions that are being asked and documents being asked for responses, and they are being asked of witnesses who really have no ability to respond to these documents, and maybe we should have the real people and, again, the ones who could, like the attorney for Mr. Sarabyn—who could have discussed that yesterday.

I will yield back my time to my colleague. Thank you, Mr. Chairman.

Mr. SCHUMER. Thank you.

Now let me just take my time. I felt it was appropriate to comment on Mr. Barr's allegation, the second day he repeated it, that DOJ worked to "cover up an internal Treasury investigation."

I simply say that Mr. Barr, as a U.S. attorney, ought to know better, and I find it just amazing that he would do this. We all know that it is standard operating procedure that when there is a criminal investigation, potential criminal investigation, the Department of Justice routinely goes in and asks the other agency involved not to investigate for the very purpose of not tainting the information. Isn't that correct, Mr. Secretary?

Mr. BENTSEN. That is correct.

Mr. SCHUMER. It has been the policy under George Bush, it has been the policy when Mr. Barr was U.S. attorney, it has been the policy under Ronald Reagan, and it was the policy in the first year of the Clinton administration.

Let me say that if Treasury had investigated itself or ATF had investigated, we would hear that the fox is invading the chicken coop, that the potentially guilty are investigating themselves. So for Justice to call in and do a criminal—and say, as they routinely do, that, please stop the investigation, my guess is that when Mr. Barr was the U.S. attorney, Justice issued orders like this in his jurisdiction many, many, many times, and so I want to clear the air here.

I hope that this is just an oversight, a mistake, not any intentional attempt to throw the word "coverup" out when it had nothing to do with a coverup and it is something that Mr. Barr undoubtedly executed many times, or several times, in his jurisdiction when he was U.S. attorney.

Mr. BARR. You are wrong.

Mr. SCHUMER. But we always—you can have your time, sir. I just thought I had to do this. But we always—it is standard operating procedure that when a Federal agency might be criminally liable, that the Department of Justice comes in and says please don't you look at it, we will look at it, under Reagan, under Bush, under Clinton.

Let's not again have some of these wild allegations floating in the air that are not an attempt to get at the facts but are an attempt to besmirch the men and women of law enforcement.

I thank you.

Mr. ZELIFF. The gentleman's time has expired.

Mr. Shadegg from Arizona has 5 minutes.

Mr. SHADEGG. While I have a number of questions for this panel, at this time I will yield my 5 minutes to you, Mr. Chairman.

Mr. ZELIFF. Thank you very much.

Mr. Secretary, going back to the Roger Altman letter and your testimony as a result of that, let me just ask you one question. Did you in fact read in detail the Treasury report?

Mr. BENTSEN. The 501 pages?

Mr. ZELIFF. In total detail.

Mr. BENTSEN. No, I have not read it in total detail. I read summaries of it, and I have read—those parts that I thought were pertinent I read in detail.

Mr. ZELIFF. I would like to express my concern that no one really felt it was important enough to chase you down and let you know

it was coming up, and that is doubly troubling when Mr. Higgins says that he was out of town and——

Mr. BENTSEN. Which are you referring to now?

Mr. ZELIFF. Well, in terms of being notified on the raid itself on the 28th.

Mr. BENTSEN. On the 28th? Well, I am sure under those conditions that they did not anticipate that they would have the results they did. I think they felt that they would be able to accomplish the task, you know, without the killing of people.

Mr. ZELIFF. I guess one concern——

Mr. BENTSEN. Of course I was overseas, as I have told you, involved in an international conference with the G-7 Ministers at that point.

Mr. ZELIFF. I guess one concern I had: I saw the expression on your face when it was mentioned the two agents that were fired and later rehired. It didn't seem to me that you were aware who they were.

Mr. BENTSEN. Oh, yes. The names, I did not understand the pronunciation of them, but the field commanders, I certainly did understand what happened in that regard, and what they finally ended up with was being stripped of their badges, of their firearms, and the supervision of in-line inspectors.

Mr. ZELIFF. Thank you, Mr. Secretary.

Mr. Higgins, Mr. Hartnett said before these committees a substantial part of the Treasury report was not accurate.

What is your view, and what exact points would you like to bring out?

Mr. HIGGINS. Well, I know how Mr. Hartnett feels, because I think personally that he was not treated fairly by that report nor was Mr. Conroy, who was his immediate assistant, because I think people attributed disagreements with their management styles with questions of integrity, and I find them to be of very high integrity.

Somebody over here said someone yesterday said the report was about 70 percent accurate. I mean I think that is probably right, but I didn't see a coverup.

Mr. ZELIFF. Are you handicapping that? What percentage would you have given?

Mr. HIGGINS. I might have given it a little higher than that.

Mr. ZELIFF. Seventy-two?

Mr. HIGGINS. I just want to point out, I think the review was comprehensive; I think they asked for every document, looked at everything. The way I am characterizing, I don't agree with everything in there, I don't think people should necessarily think it is unusual, but we don't have time for me to give you——

Mr. ZELIFF. What one single thing do you think is most outrageous about that report in terms of inaccuracy?

Mr. HIGGINS. I think the allegation that there was, somehow, within ATF's top management some desire to keep from the public what happened and why we made the mistake and why we went ahead with the raid. It shows in there that this was a conspiracy of ATF top officials to keep the public from knowing. I mean I was there, and I know it is not a fact, so obviously I disagree with that portrayal.

Mr. ZELIFF. Did you feel that Sarabyn and Chojnacki had been treated unfairly?

Mr. HIGGINS. Yes, I thought they should not have been fired. I think they should have been reassigned from a management position. Certainly with benefit of hindsight I think the panel may agree after what they have seen, they probably should have called it off, but they didn't. But I don't think that is a firing offense, I think that is a question of judgment, and they should be not supervisors but somewhere else.

Mr. ZELIFF. Let me read you one thing. According to the Treasury report—and I quote—by Friday evening, however, Treasury officials permitted the operation to proceed after ATF Director Stephen Higgins addressed Treasury's concerns that the operation could be executed safely and assured that those directing the raid were under express orders to cancel the operation if they learned that its secrecy had been compromised or if those in the compound had departed from the established routine in any significant way—unquote.

The question is, in the meeting on February 26, Friday 1993, what were the main Treasury concerns?

Mr. HIGGINS. As I recall, there were two Treasury concerns. First of all, what was going to be the role of State and local agencies in terms of either providing perimeter assistance or how were they going to be involved. The second was, how was the National Guard going to be involved.

I got the information and gave it to Mr. Simpson. He didn't seem satisfied with that information, and I worked with John for a long time. I could read that he just—something was in the back of his mind. That is finally when he said well, I don't think you should go ahead with it anyway.

Mr. ZELIFF. But you did?

Mr. HIGGINS. Well, what I did was, I called Mr. Hartnett and said Treasury says don't go forward with it. We discussed it. Obviously there was some disappointment, because we thought this was probably going to be the last time to do it safely with surprise.

Mr. ZELIFF. Thank you very much. My time has run out.

Mr. Lantos, you are recognized for 5 minutes.

Mr. LANTOS. Thank you.

Mr. Secretary, I would like to repeat, on the part of those of us who feel strongly about the extraordinary public service you have rendered this country in war and in peace, our apologies for your being sworn in. This institution runs on tradition and civility, and this was severely breached this morning, for which I want to extend to you my sincere apologies.

I would like to make a couple of observations and just ask one question. I think it is important these hearings be put in perspective.

If a person were to arrive from the Moon and would watch the proceedings and listen to television in the United States this week, he would think that the two burning issues that preoccupy us are O.J. Simpson and David Koresh, which is a commentary on the priorities that some choose to place on the issues facing this Nation.

Now, the notion that public officials fiddle while Rome burns is not a new notion, but this is a particularly poignant example of

that. I also am struck, Mr. Secretary, by the fact that after 12 years of the Reagan and Bush administrations you had taken office just a few weeks before or almost concurrently with the February raid; isn't that correct, sir?

Mr. BENTSEN. Yes, just——

Mr. LANTOS. When were you sworn in, Mr. Secretary, do you recall?

Mr. BENTSEN. I was sworn in, I believe, about January 20, approximately.

Mr. LANTOS. Well, the administration came in on January 20——

Mr. BENTSEN. It was very soon thereafter.

Mr. LANTOS. So basically you were in office for 1 month after a 12-year rule by another administration involving your Department. I also think that the notion that one of my colleagues indicated that you can be telephoned in London is as irrelevant as anything I have heard in these hearings. You were preoccupied with international trends and issues that were impacting on this Nation and this clearly was handled at a lower level.

I also want to commend you for having presided over a Treasury Department study because clearly thus far in spite of all the efforts, nothing new of significance has emerged, and so far I have to conclude that these hearings are a frivolous waste of taxpayers money.

My question to you, Mr. Secretary——

Mr. BENTSEN. Let me also say, Mr. Lantos, that when I returned on Sunday, and of course when the unanticipated happened, I was advised and became very involved, and as I recall, that night was up and good part of the night conferring with ATF and the rest of the officials.

Mr. LANTOS. I am sure you were.

The question I would like to raise, Mr. Secretary, goes beyond the immediate focus of this study but is directly related to it. Some of us are profoundly concerned by a concerted assault by the far right, militias and otherwise to undermine public confidence both in law enforcement agencies and in our Government at large. As one of the most respected senior statesmen that this Nation is fortunate to have I would like you to give us your views of whether this represents a threat to the very functioning of a democratic and open society, when segments encouraged by segments of the media, talk radio are undermining the very respect we all must share for our institutions, including law enforcement agencies.

Mr. BENTSEN. Congressman, I have committed most of my life to public service and feel very strongly about that in hopes that I could make a difference. And I commend this institution for people that serve. I have a nephew who ran for office this time. I tried to discourage him from running. I said it is a tough life that you lead.

One of the interesting things about this country of ours is that it has continued to grow and to prosper and the standard of living of our people has continued to improve. And although we hear these caustic and critical remarks about our institutions, our law-serving officers, Congressmen, Senators, executive branch, all you have to do is travel around the world a bit and compare this country with those others and how grateful we are for what we have

been able to accomplish over this 200-plus years, that we have to keep that perspective in balance, the successes we have.

Are we above criticism? Of course not. We have to be subject to criticism of mistakes that all of us make from time to time. But overall, it is a great system and I treasure it and it has meant so much to all of us I think.

Mr. ZELIFF. Thank you.

The gentleman's time has expired and many of us sitting here agree with your comments.

Mr. Chabot from Ohio has 5 minutes.

Mr. CHABOT. Thank you.

Before I yield to the gentleman from Florida I would like to make a brief statement. Our goal is to get to the bottom of what actually happened at Waco, what is the truth, and let the chips fall where they may, how could we avoid the loss of both law enforcement's lives and injuries and civilians, particularly innocent children so this type of thing never happens again?

The other side I suspect with the full cooperation of the White House it seems has been intent on trying to spin a message of the day. The first day the message seemed to be that Koresh was a monster, and I agree, he was an evil child molester, a very dangerous man. Yesterday, the message seemed to be that whatever happened it certainly does not justify firing on law enforcement officials. I agree with them there as well.

However, today's message seems to be that we have learned no new facts. With that I completely disagree. Much has been learned, much will be learned in these hearings, and we owe it to the American public to do so.

I now yield to the gentleman from Florida.

Mr. MCCOLLUM. Thank you, Mr. Chabot.

Mr. Langan, at the point in time when you received both the memorandum and later got briefed by Mr. Cuyler, I gather that you at some point subsequent to that initial briefing about the fact the raid was going to go on, and again I assume this is the first time you had learned of the raid; is that correct?

#### **STATEMENT OF MICHAEL LANGAN, FORMER ACTING DEPUTY ASSISTANT SECRETARY OF THE TREASURY**

Mr. LANGAN. That is correct.

Mr. MCCOLLUM. You and Mr. Noble and Stanley Morris had a meeting to discuss this; is that correct?

Mr. LANGAN. Yes.

Mr. MCCOLLUM. As a result of that meeting the three of you recommended to Mr. Simpson not to go forward with the raid at that time?

Mr. LANGAN. That is correct. I think a number of concerns were evinced and we recommended to Mr. Simpson who was acting that the raid not progress.

Mr. MCCOLLUM. He was acting for the Secretary of the Treasury at that point, in Mr. Bentsen's absence. Why didn't you want to go forward? What was the red flag or two or three that you had in your mind?

Mr. LANGAN. The day was a difficult one. We had the World Trade Center explosion, we had concerns about our Customs and



our Secret Service people who were missing at that time and almost coterminous with that information coming to us we received a notification, a brief notice of a raid that would take place 2 days later.

Based on what was able to be read—there wasn't sufficient information to make an adequate judgment about it, but what seemed clear was that there were elements described that were dangerous.

Mr. MCCOLLUM. Like what?

Mr. LANGAN. There were weapons at Mount Carmel. There were people in the building with criminal records who may be violent.

Mr. MCCOLLUM. Please proceed.

Mr. LANGAN. And the result of that oversight on our part was to check with ATF to get more information from the Bureau about the necessity of the raid, which we did, and which Mr. Higgins provided.

Mr. MCCOLLUM. Mr. Simpson, you are the one who got more information about this raid. You initially called it off and Mr. Higgins talked to you again. What persuaded you to go forward with this raid and authorize it a day or so later?

Mr. SIMPSON. Mr. Chairman, I had initially not had reservations about this option.

Let me begin—I initially had reservations, did not form a judgment, thought about it for an hour and decided all things considered, the ATF proposal, with all its potential liabilities, was probably the best option available. After talking to Mr. Noble and Mr. Morris and hearing the advice they gave based on their extensive expertise, I changed my mind and called Mr. Higgins back and asked him to call it off.

Subsequently, Mr. Higgins called me and I got Mr. Noble in a restaurant and brought him into the conversation, and Mr. Higgins gave us both additional reasons that had not previously been called to our attention: The fact that there was a series of newspaper articles beginning that would alert people in the compound to the possibility of a raid, the fact that there was an undercover agent inside who would be able to alert the ATF if anything inside the compound changed, and the fact that on Sunday morning there was apparently a ritual during which the men were separated from the women and children and the weapons were locked up and that that was an opportune time for this raid to occur. Given those three pieces of information, with some hesitation Mr. Noble and I acquiesced in the ATF proposal.

Mr. MCCOLLUM. Thank you.

Mr. ZELIFF. There is a series of votes coming up. We will proceed to Mr. Wise and then take a recess until the completion of those votes, 5 minutes beyond completion of that series of votes.

Mr. Wise from West Virginia, you have 5 minutes.

Mr. WISE. Thank you, Mr. Chairman.

I am going to make one quick point echoing Mr. Schumer's point about the Department of Justice practice. In 4 years of chairing a subcommittee for the Government Operations Committee overseeing the Department of Justice and all its agencies, it was always my experience under the Bush administration, and that was my tenure of chairing that subcommittee, that when Department of Justice had a pending criminal prosecution or investigation, they

shut everybody down. They not only shut their agency down as far as contact with Congress but they shut other agencies down in terms of our ability to get information from them whether at the U.S. attorney level or at main Justice.

The second thing, Mr. Secretary, if I could ask you quickly, and I think Mr. Langan pointed this out, at the time you were coming back from the G-7 international conference, there was also another significant ATF procedure going on; was there not?

Mr. BENTSEN. Yes. You had the World Trade Center explosion at that time.

Mr. WISE. And ATF was busily investigating that?

Mr. BENTSEN. No question.

Mr. WISE. As I recall, that was the main item on everybody's media agenda at the time and grabbing everyone's attention.

Mr. Higgins, I would like to follow up on the questions that were just addressed to Mr. Simpson, because I think as Mr. Simpson related why he acquiesced to your advice, I think it would be helpful to hear why it was that you advised him for the raid to go forward as you did.

I would like to note that the former questioner on the other side had raised questions about whether people in ski masks, and whether it was necessary to have 70 people charging across a field. I think the question about ski masks has been dealt with, that there were none. But why not just have an agent go to the front door and knock on it and say I have a warrant to serve on David Koresh. Did you consider that?

Mr. HIGGINS. Yes. In fact, I remember Secretary Bentsen asking me that question about a month later. I told him to have done that, would have been to send that agent to his execution, the way David Koresh felt about ATF and its agents.

I think somebody on the panel may have asked one of the agents yesterday what he would have thought if he had walked up with a warrant saying I am from ATF and I am here to help you.

Mr. WISE. I think it is important that that question be answered at every level.

Mr. HIGGINS. I am sorry. I didn't mean to be flippant.

Mr. WISE. If you would to recount the factors that led you to advise Mr. Simpson to continue with the raids.

Mr. HIGGINS. Absolutely. When I called back, after I talked with Mr. Simpson the first time, I called Mr. Hart and said let's shut it down—let me go back one step before that. What we sent there was never intended to be an information plan for them to approve or disapprove. It was simply a notice. There was no requirement that they approve.

In fact, for the 11 years that I worked as Director we never got approval for any. And I don't know that Justice does it any differently. I knew that John didn't have all the information. When I called Mr. Langan and said shut it down, he said there are a couple of things that have come up.

One is the paper is going to run this article regarding Saturday. We would have moved the raid up until Sunday. Once it is run because of the things that are going to be in there, it is going to identify probably some of our informants, which will make it dangerous for them. This is probably going to be the last time that we can

execute a surprise plan. After that point, David Koresh will be ready and waiting.

He is the one who came up with the proposal. How about we send somebody in on Saturday and Sunday and let them see if there is anything unusual. I said that sounds like a good suggestion. I called John Simpson back and made that as an alternative proposal, and he said OK.

Mr. WISE. Was that what Agent Rodriguez was doing?

Mr. HIGGINS. That is exactly what he was doing.

Mr. WISE. Thank you.

I yield back my time.

Mr. ZELIFF. Thank you.

The Chair will call a recess until 5 minutes after this series of votes.

[Recess.]

Mr. ZELIFF. The joint subcommittee hearings will come to order and resume.

The Chair now recognizes Mr. Schiff for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman.

Secretary Bentsen, about the memo from Mr. Altman you have already testified about, I wonder if you could clarify something please. I understand that the situation has been taken over by the Department of Justice as you explained, but still, when Mr. Altman, who worked for you said words like, the risk of a tragedy are there, did you take any action whatsoever on the basis of this memorandum when you received it?

Mr. BENTSEN. Congressman, without a question, once the FBI takes over from the Justice Department they take over. They run it and I had all kinds of responsibilities otherwise.

What you saw from Mr. Altman, he sent me memos all day long. It was one of many memorandums. It was not any directive, it was not any conclusion, it was something that was passed through, a thought he had at the moment.

Mr. SCHIFF. But the thought he had at the moment was very serious. Why would you not at least forward his memorandum to the Attorney General?

Mr. BENTSEN. There is no question in my mind but what the Attorney General as part of the Justice Department had exhaustive studies that they must have gone to great lengths to satisfy themselves on whatever the decision was. That was theirs. I had other major responsibilities I was working on.

Mr. SCHIFF. But Mr. Altman was working on this situation for your Department; is that right?

Mr. BENTSEN. Mr. Altman had other responsibilities besides this. At that point this became a side issue.

Mr. SCHIFF. The issue that the risk of a tragedy is there and his advice that Mr. Koresh will concede if they don't use this gas attack, you think that is a side issue, sir?

Mr. BENTSEN. You have to have some understanding of the issues we were involved in. All of them were important but we dealt with our responsibilities. The Justice Department is a major, major Department, has all kinds of people to study these things to make their decisions. That was theirs. We had many other charges against us that we had to fulfill.

Mr. SCHIFF. So you did not suggest to Mr. Altman that he contact the Justice Department directly with his views?

Mr. BENTSEN. I did not. I have been through that at length. We were involved of course, too, in the World Trade Center explosion. One of the things I think ATF doesn't get enough credit for, actually, they are the ones that found the piece of metal that was the turning point in the way of evidence that helped them catch the perpetrators or find out who they were.

Mr. SCHIFF. Mr. Higgins, I have a copy of some handwritten notes which I am informed are notes that you wrote in your own hand and signed Steve, addressed to Chuck, who I think is Mr. Sarabyn; am I correct?

Mr. HIGGINS. You are correct.

Mr. SCHIFF. I am told that these are notes you wrote during your review of the draft of the Treasury Department report on the Waco incident.

Mr. HIGGINS. Not during the review of the draft. Those were written after I was retired when I saw the final report, the blue-book.

Mr. SCHIFF. These are notes on the final report?

Mr. HIGGINS. Yes.

Mr. SCHIFF. I want to refer to one entry, quoting, at the top of the page, "I did offer objections, but was continually overruled. I felt it was silly to call off a raid primarily for what I discerned was the real reason, wanting to avoid embarrassment for Bentsen should something go wrong." Have I read correctly? That is on page 2 of this draft.

Mr. HIGGINS. You have read correctly.

Mr. SCHIFF. Could you explain what you are talking about there, that is, when you say, I did offer objections but was continually overruled and felt that it was silly to call off a raid primarily for what I discern was the real reason, wanting to avoid embarrassment for Bentsen should something go wrong—what is being discussed there?

Mr. HIGGINS. Initially when I asked that the plan be sent over or notice be sent over, I did so because the raid was taking place in Texas and I was aware of the fact that if there was something in the paper that was Mr. Bentsen's home State, that he would see it.

This was to give him heads up. This is my assessment of the conversation that I had with Mr. Simpson. He can answer you himself.

As I talked to John that day in terms of the questions and the concerns that he had, it was my sense after our conversation that the overlying concern was that if something went wrong that it would be embarrassing to the Secretary. I simply didn't think that should be how we judged law enforcement, but that is my assessment of the situation.

Mr. SCHIFF. I agree with you that assessment of law enforcement should not be based on embarrassment of a Government official. But who was arguing that the raid should be called off or in any other way was arguing that the decision should be made based upon its embarrassment to the head of a department? Who was saying that.

Mr. HIGGINS. It wasn't an argument. It was based on a conversation that I had with John, and I am—with Mr. Simpson. That is my assessment of the conversation we had. He wasn't making that as an argument. That is my assessment of why there was too much concern.

Mr. SCHIFF. Backup just a moment. If there is time, I will be glad to go to Mr. Simpson. I don't wish to exclude him. I am reading from your memorandum here. Mr. Simpson was saying what about embarrassment to the Department?

Mr. HIGGINS. As part of the discussion we had, he indicated that one of the concerns they had was if something went wrong in Secretary Bentsen's home State that that would be embarrassing to the Secretary. That is just part of our entire conversation.

Mr. SCHIFF. Was in relation to one aspect of the raid or to the entire raid and all of its circumstances?

Mr. HIGGINS. It was in relation to if something bad happens, as it did happen, that could occur, so that was the discussion.

Mr. SCHIFF. Thank you.

My time has expired.

Mr. ZELIFF. The gentleman's time has expired.

The Chair recognizes the gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Let me acknowledge that I would like to put in an opening statement for the record and I ask unanimous consent for that to be admitted.

Mr. ZELIFF. Without objection so ordered.

Ms. JACKSON LEE. There is I think an important part to this hearing that also deals with policy and philosophy. It is important, because if we are to get away from this climate of fear and apprehension, Secretary Bentsen, we need to really put the light on for the American people. And the presiding chairman, who I respect, mentioned that these hearings are not about child abuse and not about the National Rifle Association. But they are about guns and children, lost lives and civil justice.

Mr. Secretary, did anything in your 5-month investigation and report that resulted suggest to you that the ATF acts as a predator organization, meaning that they go rampantly into civilian homes, private areas, finding or going without any knowledge of violation of law—with the very intense criticism that the report showed, does it in any way suggest that they do it in violation of the second amendment or does it suggest that they are within the confines of their responsibility?

Mr. BENTSEN. It does not suggest the former, and it does speak of their compliance with their orders and the law and that they did not violate that law. There were some mistakes in judgment that took place and the report goes into those extensively and intensively.

Ms. JACKSON LEE. So we don't see an organization rampant and going out after the prey?

Mr. BENTSEN. Absolutely not.

Ms. JACKSON LEE. Mr. Secretary, did you not also note or did this report not also note that in the line hierarchy that you had several Assistant Secretaries of the Treasury who raised questions

about this particular raid? I note Noble and I note Simpson, even though I know they were advised, but they did raise questions, did they not?

Mr. BENTSEN. Yes, they did.

Ms. JACKSON LEE. So there was a process in which there was involvement of management to question what happened?

Mr. BENTSEN. That is correct.

Ms. JACKSON LEE. If we are to be constructive with these hearings, then what we should try to do is to possibly coordinate, to add places of added coordination possibly, but we do know that there was a system in place where others had a chance to review?

Mr. BENTSEN. There is no question but what this report showed things that could have been done better, and as soon as that report was in, we began to further buttress those points to try to improve the communication, to try to improve the training. These things have been implemented.

Ms. JACKSON LEE. Mr. Secretary, I thank you for that. I think it is important to clarify the context in which the ATF functions and that their function is not one that with rampant disregard violates of the second amendment so they can be compared to organizations like the militia and others that might counter those points.

Mr. Higgins, I appreciate your service. But understand that as I have asked the Secretary so we can give a broad view, there also has to be a set of circumstances where someone is responsible. I want to separate out David Koresh for the innocent lives of Branch Davidians who were innocent and the innocent lives of ATF officers, a wife of a wounded officer is here in the audience and spoke to me this week. I feel that burden.

Mr. Higgins, when the two management persons, Assistant Secretaries in the Treasury had reservations and said "no," my question to you and my concern is whether you precipitatively moved forward because of we have gone too far, we have spent the money, I don't think that we can focus on spending the money when potentially lives would have been lost. My question is why you did not hold back?

Mr. HIGGINS. I think that is probably one of the fairest questions I have ever been asked. I did not because I thought that the people we had were fully qualified and competent. They had an excellent plan to resolve this issue in a peaceful and a safe manner and that this was our last good opportunity to do that.

I don't like being here any more today, and I am sure you don't either, under these circumstances. And I can't tell you how bad we feel in ATF; we didn't do it right and we didn't do it safely, but I can also tell you that no matter how tough it is to be here or how bad we feel, it would be a lot tougher and we would feel a lot worse if we had not tried to take some action to stop what was going on there and they had done as we suspected they would do and that is either to invoke a violent confrontation in the community and/or commit mass suicide. It is tough to be here, but I would rather be here explaining why we tried to do what we did than to try to explain to you later why we hadn't done something if what I thought was a likely scenario would occur.

Mr. ZELIFF. The gentlelady's time has expired.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. ZELIFF. The chairman is going to take his 5 minutes.

Mr. Higgins, you indicated that at the time of the raids that you were out of town; is that correct?

Mr. HIGGINS. I was out of town for about 4 days prior to February 26, but not out of the town on the day of the raid, no.

Mr. ZELIFF. Mr. Bentsen indicated that he was in Europe attending to more important business, is that right—

Mr. BENTSEN. I was involved in an international conference at that point, with the G-7 countries.

Mr. ZELIFF. Just so I make sure that I am accurate in my notes here, relative to the document that was entitled, "Memorandum for Secretary Bentsen from Roger Altman, subject Waco, dated April 15, 1993," whereby he says to you, "the risks of tragedy are there, and the FBI waits indefinitely, Mr. Koresh eventually will concede"—I understand that you did not pick up the phone and talk to Mr. Altman. Did you talk to the Assistant Secretary or his Assistant Josh Steiner?

Mr. BENTSEN. Let me state as I stated before, I received many, many memorandums from Roger Altman. This was no directive. That was not something asking for a decision. The responsibility at that point was with the Justice Department and the FBI. They are the ones that proceeded in the second raid and that was their jurisdiction, and they had all kinds of experts working with them on that. I had other responsibilities to attend to.

Mr. ZELIFF. So I am correct in saying that relative to this memo you took no action?

Mr. BENTSEN. I thought it was already being taken care of.

Mr. ZELIFF. You assumed others were taking action?

Mr. BENTSEN. They had the responsibility; I did not.

Mr. ZELIFF. You didn't pick up the phone—

Mr. BENTSEN. No, I did not. I had other responsibilities.

Mr. ZELIFF. Relative to page 179 in the Treasury Department overview report relative to the comment that they wanted to avoid embarrassment to you so they didn't want to call off the raid, if the risk of a tragedy were there, was it political pressure that caused CS gas to be used with such disastrous results?

Mr. BENTSEN. I told you I had nothing to do with that decision. That was under the responsibility of Justice at that time. But I certainly don't believe that was a political decision.

Mr. ZELIFF. And you had nothing to do with any discussion on CS gas?

Mr. BENTSEN. Not at that point. That was Justice. They were handling it at that point.

Let me say the Congressman made a point about some of these charges on the ATF. I have been given this information and I think it is important. In the past 10 years, ATF has investigated more than 50,000 cases involving nearly 80,000 suspects, served over 10,000 search warrants, and in that time 230 lawsuits have been filed against ATF agents for alleged constitutional violations. There have been no adverse court decisions against any ATF employee in any of these cases to date.

Mr. ZELIFF. Going back to my question relative to page 179 in Mr. Higgins' comments where he said they did not want to call off

the raid because they didn't want to embarrass you, do you think that was good judgment?

Mr. BENTSEN. I don't think that was the reason. I think they made their own decisions on the facts and not any question of embarrassment.

Mr. ZELIFF. Mr. Higgins, since you wrote the memo, any comment?

Mr. HIGGINS. I think Mr. Bentsen is absolutely right. This is my interpretation of a conversation that I had with Mr. Simpson. Mr. Bentsen wasn't even in town, so I doubt that he had knowledge of this or it reflected his views, necessarily.

Mr. ZELIFF. I yield back the balance of my time.

Mr. Chabot.

Mr. CHABOT. Mr. Simpson, to your knowledge, who was the highest ranking Government official who knew about the initial raids before it occurred? When I say initial raid, I am talking about the February 28 raid.

Mr. SIMPSON. To my knowledge, I was.

Mr. CHABOT. You were the highest ranking Government official?

Mr. SIMPSON. Actually in office who knew about it before February 28; that is correct.

Mr. CHABOT. What specific materials did you review prior to, you or anybody in the Treasury review prior to giving the ATF the go-ahead on the raid?

Mr. SIMPSON. Not as much as we would have liked, Congressman. We had the memorandum that Mr. Cuyler brought to us.

Mr. CHABOT. Was that just one page?

Mr. SIMPSON. Yes, sir. We had the benefit of a short conversation with him and then the benefit of a more extensive conversation with Director Higgins later in the evening.

Mr. CHABOT. But this is the only written document?

Mr. SIMPSON. Yes, sir.

Mr. CHABOT. Thank you very much.

Mr. ZELIFF. The Chair recognizes Ms. Lofgren of California.

Ms. LOFGREN. Thank you, Mr. Chairman.

I think it is important for us in trying to search out exactly what happened and how the thing could be improved in the future to understand the context in which this happened. I wanted to comment in response to Mr. Buyer's earlier comments.

The need for context is to understand things, it is not to provide an excuse for misbehavior, if there were any. Although we have seen some mistakes, I don't think we have seen misbehavior. But to understand why people did what they did, what they knew at the time or what they thought that they knew at the time and how that impacted the judgments they made.

I think it is unfortunate that we are not going to get that whole truth and that whole context because we are not going to be calling the reporters who had issued the series of articles starting on February 27, that were read by all parties and contributed greatly to the understanding of what they were dealing with and the kind of situation they were dealing with.

By way of example, my mother died on February 25 and this whole public event is like a blur to me. I wasn't paying any attention. On the day of the raid I was giving the eulogy at my mother's



funeral, so if you were to question me about these events, it almost didn't happen to me because that was the context in which it occurred.

Secretary Bentsen, you had been—Secretary Bentsen—I think of you as Ken's uncle—in your job for what, 20—

Mr. BENTSEN. Around a month.

Ms. LOFGREN. At this time wasn't your Department also involved in dealing with the World Trade Center bombing right around this time?

Mr. BENTSEN. Absolutely.

Ms. LOFGREN. To what extent was that disaster also calling on your attention, in addition to the currency matters you were dealing with in Europe?

Mr. BENTSEN. No question, it was part of our concern at that time and took part of our attention. But as you can imagine, the Secretary's job is one that gets into trade, taxes, budgets, and it is a—my wife has told me that I have now slowed down from 200 percent of my time to 135 percent of my time. We are going to run it up a little today, I guess.

Ms. LOFGREN. Mr. Higgins, I have seen the memo written by Mr. Cuyler to Mr. Langan, and in the fourth paragraph it talks about, the Branch Davidians and points out that the only male in the cult allowed to have sexual relations was Mr. Koresh, although they call him Howell here, I guess that is his legal name. How much did you know given—I am sure you were also involved in the World Trade Center and there were other people working on this—that this wasn't perhaps as much on the top of your agenda as that other event; how much did you know about the nature of the psychology of this group when you were making the decisions on the first raid?

Mr. HIGGINS. Well, I don't know that I knew that much about the psychology of the group because I am not sure that anybody truly knew what went on in this individual's mind, but I did know a lot about the practices. They were not violations of ATF law but they were violations of other laws. I knew about the illegal activities.

Ms. LOFGREN. Mr. Aguilera had documented the practice of raping little girls by Mr. Koresh and also had documented in his investigation the beating of the babies to the point where they had bled and also documented that the men had been separated from their wives and were required to remain celibate so their wives could become eligible for Mr. Koresh. These were also in the newspaper articles that were published about this same time.

Did that information filter up—that information obviously relates not to whether they deserve the full right of the protection of the Constitution, they do, and it is not about a Federal crime, but would give some insight about how to do your job. Is this a group that would give up after they had given up to their children—is this a group that could easily say I made a mistake? Is it a group that is operating on a different kind of world view? Did you have that kind of information?

Mr. HIGGINS. I knew most of the information that you see reflected in the warrants and that you have described. I didn't know it all in that detail but knew enough to know that there was a serious problem.

Mr. ZELIFF. The gentlelady's time has expired.

The Chair recognizes the gentleman from the southern territories of New Hampshire, Mr. Blute from Massachusetts.

Mr. BLUTE. Thank you, Mr. Chairman.

Before I yield my time, I would like to join my colleagues in telling Secretary Bentsen how much high regard he is held in by Members of both parties in this Congress. On that I would yield to Mr. Shadegg of Arizona.

Mr. SHADEGG. I thank the gentleman for yielding.

I would like to express my appreciation to every one of the members of the panels for being here as well, and particularly you Secretary Bentsen.

Mr. Secretary, I noted that you made some comments about the review that was performed by Treasury. To some degree it seemed to me you were slightly defensive that anyone would look back into that. I presume as a former Member of Congress that you don't think this Congress should abrogate its obligation because an agency has written a report, do you?

Mr. BENTSEN. Certainly not.

Mr. SHADEGG. The point I wanted to make on that, and maybe I will just ask you this outright—were you aware before you made those remarks that in testimony before this committee your Treasury agents have had deeply conflicting views about the accuracy of that report? Yesterday, some testified it was, roughly, 70 percent accurate, Mr. Higgins today said he thought it was about 70 percent, perhaps slightly higher than that. It seems to me that the American people ought to expect a standard better than 70 percent, wouldn't you agree?

Mr. BENTSEN. Well, I think it is a much higher standard. I don't agree with that evaluation at all. I can understand those fellows yesterday who had been demoted having that kind of reaction.

Mr. SHADEGG. Unfortunately, it is both people who have been demoted and people who have not been demoted. I think we have an oversight responsibility here.

I would like to turn my questioning to Mr. Simpson and specifically to, what appears to be the only written memorandum that came to higher ranking officials at Treasury before the raid, and it is the memo of February 26 to Michael Langan. Do you have that memo?

Mr. SIMPSON. Yes, sir; I do.

Mr. SHADEGG. Were you aware at the time or are you aware now that the second paragraph statement that Mr. Powell had been acquitted of murder is not accurate?

Mr. SIMPSON. I was not aware of that, no; sir.

Mr. SHADEGG. In the next to the last paragraph there is a statement that says a well-reasoned, comprehensive plan has been approved which allows for all contingencies. Had you seen such a plan?

Mr. SIMPSON. No, sir; I had not.

Mr. SHADEGG. Do you know if the author of this memo, Mr. Cuyler, had seen such a plan?

Mr. SIMPSON. No, I do not.

Mr. SHADEGG. Mr. Higgins, had you seen such a plan?

Mr. HIGGINS. I had seen no such a plan in writing. I had discussed a great deal of the plan with the raid planners, but no, I had seen nothing in writing.

Mr. SHADEGG. Were you aware there was no plan in writing?

Mr. HIGGINS. No.

I knew that certain documents had to be prepared in order to get certain approvals but I was not aware of, nor did I think anything was wrong at that point. There was no specific plan that outlined everything in writing at that point.

Mr. SHADEGG. Did you see this memo before the raid on the 28th?

Mr. HIGGINS. I did not.

Mr. SHADEGG. Who is the highest ranking individual who saw the plan before the 28th?

Mr. HIGGINS. Chris is probably in the best position to answer—

Mr. SHADEGG. Perhaps you can answer that, sir.

Mr. CUYLER. I provided copies of this memorandum to Mr. Hartnett upon my return from Treasury.

Mr. SHADEGG. Was he the highest ranking official?

Mr. CUYLER. Yes, sir, in ATF.

Mr. SHADEGG. You wrote this sentence. Were you aware at the time you wrote that sentence that there was no written plan?

Mr. CUYLER. No, sir. I based that on the briefing that I sat through and in discussions with various division chiefs at headquarters.

Mr. SHADEGG. At the time you wrote this memo had you been briefed on the fact that the original plan was to conduct a raid on March 4, some several days later, and that it had to be moved up by 5 or 6 days because of the newspaper articles that came out?

Mr. CUYLER. I don't believe when I wrote this that I was aware of why the date changed. I was just made aware of the date change and that I should advise Treasury what we were going to do.

Mr. SHADEGG. Were you aware when you wrote that it was a well-reasoned, comprehensive plan which allows for all contingencies that there were apparently go or no go procedures in it?

Mr. CUYLER. No. When I wrote this, that was my opinion. I felt there was a well-reasoned—that was the impression that I was under.

Mr. SHADEGG. That was just based on your discussion, not having seen anything?

Mr. CUYLER. That is correct. I hadn't seen the tactical plan, nor been briefed on it.

Mr. SHADEGG. You would agree that such a plan should include go or no go instructions for a raid of this magnitude; wouldn't you?

Mr. CUYLER. Yes, sir.

Mr. SHADEGG. The big issue here has been the issue of surprise. It seems to me that in any raid where you are going to do a dynamic entry, you are going to burst through the door without knocking and asking, surprise is an important element. Were you aware that apparently the agents in the field had not been told that if the element of surprise was lost they should not go forward?

Mr. CUYLER. No, sir; I have no knowledge in that regard.

Mr. SHADEGG. Mr. Higgins, were you aware that that communication had not been made?

Mr. HIGGINS. I think you are exactly right; I think it is almost intuitive that you don't go if you don't have surprise because the entire plan is based on that. I thought the understanding we had in the field was more safe and secure than that. And that is that when you go in on Saturday and Sunday, not if you have lost the element of surprise, but if you see anything that looks unusual or abnormal, call it off, because we simply don't want to take a chance. To me that goes even further than having lost the element of surprise or whatever term you want to use. I am not aware that that wasn't passed on. I would be surprised.

Mr. SHADEGG. My time has expired.

I am sorry that senior officials weren't more involved.

Mr. ZELIFF. The gentleman's time has expired.

Ms. Slaughter of New York, 5 minutes.

Ms. SLAUGHTER. Thank you.

I would divide my time equally with my colleagues Mrs. Thurman and Ms. Jackson Lee.

Mrs. THURMAN. Thank you.

Let me continue with this because Mr. Higgins you have talked about the fact that you were involved in the planning of that; is that correct?

Mr. HIGGINS. That is correct, approving the plan.

Mrs. THURMAN. In the report, Sarabyn yesterday also talked about this, about the questions that he asked Agent Rodriguez when he came back, and the report says that had been a part of the plan, that he didn't really notice any guns or there wasn't anything really out of place other than the actions of Mr. Koresh; is that correct?

Mr. HIGGINS. They developed I think certain guidelines they were going to look for, certain things that he had done historically if he felt like ATF or someone else was about to come get him. Some of the things he did was arm, put sentries up and things like that. So in the practical planning they decided those were the kinds of things they were going to look for.

Mrs. THURMAN. And, in fact, the report says he did that?

Mr. HIGGINS. Yes, I understand he did. I think he asked all those questions and no one saw any guns.

Mrs. THURMAN. And you believe he asked the right questions, based on the plan?

Mr. HIGGINS. I think he thinks that he does. I think the plan also says that the undercover agent——

Mrs. THURMAN. You were a part of the plan, so I need to get this and understand it.

Mr. HIGGINS. Right. I think the plan also says the undercover agent was to go in and look and see if things looked normal. If so, he was to come out and say that. Part of his job was to see if things looked normal. You will have to talk with him as to whether or not the undercover officer and the person who made the decision thought things were normal.

Mrs. THURMAN. But the plan says that he asked those questions, and I am just trying to get were those the right questions to ask.

The only thing they said was a little concerning was maybe Mr. Koresh dropped his Bible and acted a little excited, but was there any movement, were there any guns, did there seem to be any ac-

tivity that would have suggested that they would have what ended up being an ambush?

Mr. HIGGINS. I think it probably wasn't stated in any written plan that that is what they were going to do, but those are the kind of questions that I believe he and Phil Chojnacki had agreed on in advance that would give them some indication, based on past experience, as to whether or not anybody was expecting them, and those are the kind of questions they asked, and, obviously, all of the answers were "no." I think that is why they went ahead.

Mrs. THURMAN. OK, so that is why you believe, based on what your knowledge of the plan was, that they did do what was suggested that they would do, then?

Mr. HIGGINS. I think that is why they did what they did, yes.

Mrs. THURMAN. OK. At this time I will yield the balance of my time to the gentlewoman from Texas.

Ms. JACKSON LEE. I thank the gentlelady from Florida, and I thank the gentlelady from New York as well.

Mr. Secretary, I heard a characterization of a comment that you made, and the comment did not appear to suggest that the characterization was that you indicated, either by words or implication, that you were on more important business by being in Europe.

First of all, were you notified of this before you departed to Europe and dealing with the business at hand?

Mr. BENTSEN. No; I was not.

Ms. JACKSON LEE. So your comments were not to say you were on more important business? Maybe you want to explain it, Mr. Secretary.

Mr. BENTSEN. I certainly did not say that. I said I was fulfilling my responsibilities there. I might further state that as I understood Mr. Higgins, he stated that in 11 years that he had that service that he was not obligated to clear these things insofar as these arrests with Treasury. I think that is correct. That has been changed subsequent to what happened there. We now require that.

Ms. JACKSON LEE. I think that is a very important note.

Let me add that I appreciate as well the figures that you used with respect to the ATF convictions and various activities with respect to gun violations, and I thank you, Mr. Secretary. I wanted to clarify that you were not in any way denigrating the importance of this very great tragedy of which we all experienced.

Mr. BENTSEN. Sure.

Ms. JACKSON LEE. Mr. Higgins, let me ask you, if I might, to get back to the point you made that caused you to pursue going ahead, the possibility of mass suicide. And of course when we all heard that, we were concerned because we were all, I hope, whether it be the American public or whether it be the decisionmaking individuals or those on the line, concerned about loss of life.

Two questions. First, did the Governor of Texas do anything contrary to the wishes of the ATF or was that a cooperative effort? Let me give you the two questions, please.

Was that a cooperative effort, so any suggestion that the Governor may have gone beyond the, if you will, purview of her responsibility or was in conflict with any information given by ATF, and then the second question is, as it was a sect, why did you all not rely more upon information about that sect and bring in individ-

uals who might have been knowledgeable to assist you to prevent the loss of life?

Mr. HIGGINS. Your first question, I think the Secretary or the Governor of the State of Texas, I have no knowledge that she went beyond any bounds of anything or had any particular disagreements or did anything that was—if your question is, did she do anything that was unusual or whatever, no, I think the office cooperated with ours in every respect.

The second thing, did we check with enough experts on sects, could we have done a better job——

Mr. ZELIFF. Thank you.

Ms. JACKSON LEE. He is answering the question.

Mr. ZELIFF. I'm sorry, I thought you had finished.

Mr. HIGGINS. I'm sorry, and I can do it real quickly.

Ms. JACKSON LEE. No, please do not. It is an important question. Thank you.

Mr. HIGGINS. It is a good question. No, I can't say in hindsight that we did enough of that. I can only say that the FBI did a lot of that during the 51 days and got opinions that were 180 degrees in conflict from, quote, experts. No. 1, I don't even know who the experts are on the mind of David Koresh. I wouldn't know that today.

Mr. ZELIFF. Thank you very much.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. ZELIFF. The Chair now yields to Mr. Barr from Georgia for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman. Mr. Simpson, if I could ask you to direct your attention to two documents which you have before you, I believe. They are memorandum both from Deputy General Counsel of the Treasury, Robert McNamara. One is dated April 9, 1993. The other is dated April 14, 1993. The first document is No. 17722, the second document is No. 18994.

[The information follows:]

T R E A S U R Y

## I N T E R O F F I C E   M E M O R A N D U M

Date: 09-Apr-1993 01:17pm EST  
 From: Robert M. McNamara  
 MCNAMARAR  
 Dept: Asst GC Enforcement  
 Tel No: [REDACTED]

TO: Ron Noble ( NOBLER )  
 CC: Jean Hanson ( HANSONJ )  
 CC: Dennis I. Foreman ( FOREMAND )  
 CC: Faith Hochberg ( HOCHBERGF )  
 CC: Beverly Hadley ( HADLEYB )

Subject: Waco Press Release

I learned this morning that Jack DeVore does not want to incorporate into the press release the changes recommended by the Justice Department. There are a number of factors of which Jack may be unaware which strongly argue that the changes be adopted:

-- we asked Justice to review the press release 1) to determine whether any of the language could in any way prejudice the prosecution and 2) to ask the FBI negotiators whether any of the language could in any way interfere with their negotiation strategy.

-- Justice prosecutors in Washington and in Waco said that any words which could be interpreted as being critical of ATF must be avoided since it would play into the defense attorneys hands and aid the defense attorneys in making ATF the issue (e.g., "what went wrong", "investigation" of ATF);

-- the FBI said that the review might have a positive impact, but it was critical to that success that the phraseology be non-judgmental, so as not to play into Koresh's hands.

-- the mark-up I gave you was the FBI's and DOJ's consensus version which would satisfy these concerns. I spoke personally to the prosecutors and to the head of the FBI negotiating team in Waco when I was there this week, and they were very specific about this.

-- We are trying to get Justice to cooperate with us in getting the review of ATF off the ground and not opposing the measured approach which you have developed. As you know, the key to our somewhat successful meeting this morning was our promise to Justice that we would closely coordinate with them on every aspect of the review. If our first act is to reject

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the changes they requested because of prosecution or negotiation strategy, we have lost any credibility we had after the meeting this morning.

-- The ultimate success of the Secretary's review of ATF's action is going to require Justice's assistance and support. Unless there is a strong policy reason which overrides Justice's concerns, we should ask Jack to reconsider or raise the issue with Mr. Altman, since Web Hubbell is apparently opposed to even the compromise we have worked out.

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T E A S U R Y  
I N T E R O F F I C E M E M O R A N D U M

Date: 14-Apr-1993 02:05pm EST  
 From: Robert M. McNamara  
 MCNAMARAR  
 Dept: Asst GC Enforcement  
 Tel No: [REDACTED]

TO: John P. Simpson ( SIMPSONJP )  
 TO: Michael D. Langan ( LANGAN )  
 CC: John W. Mangels ( MANGELS )  
 CC: Beverly Hadley ( HADLEYB )

Subject: Preliminary Investigative Plan

CLOSE HOLD -- SOME INFORMATION IS LAW ENFORCEMENT SENSITIVE

First Stage:

o identify all existing ATF documents, reports, materials and files (both investigative and administrative) in the field, the region and headquarters relating to the Branch Davidians

-- segregate into time phases: pre-June '92 referral, post-referral to pre-warrant, post-warrant to planning, planning phase, training phase, pre-execution phase, execution phase(s)

-- begin to identify "categories" or "clusters" of person who should be interviewed for each of the time phases at the appropriate time (potentially identify those who will not, probably will not, probably will and will be witnesses for either the prosecution or the defense):

o determine whether ATF radio traffic was taped, and get copy of all 2/28 tapes;

o determine whether ATF took post-shooting statements from agents or conducted an internal post-shooting inquiry and get any reports or documents generated by such an inquiry;

o obtain copy of ATF procedures, manuals and instructions for agents relating to the planning and execution of warrants

o obtain copies of interviews, reports and other documents prepared or obtained by the Texas Rangers (TRs) for both the murder and leak investigations;

o obtain master copy of documents, index and log, and prepare working copies of necessary documents;

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- o have investigators review documents to identify missing, collateral or other source documents, and obtain these;
- o collect news clippings and review for possible questions and issue areas which will need to be covered;
- o have investigators and analysts review documents and prepare lists of questions to be answered, issues to be raised, topics to be discussed, individuals to be interviewed, and leads to be followed up;
- o obtain copy of procedures, manual and instructions for agents from other Treasury and non-Treasury law enforcement agencies relating to the planning and execution of warrants;
- o identify experts from other Treasury and non-Treasury law enforcement agencies relating to warrant execution, high risk entries, SWAT procedures, contingency planning etc.
- o interview experts regarding the general principles, procedures and practices within their expertise (with a view toward later asking specific questions with reference to the Waco situation);
- o develop historical information on previous ATF high-risk entries, number of shooting incidents, post-shooting reviews and any changes in procedures resulting from those reviews; interview participants in the more serious ones to determine whether agents had recommended changes during post-mortems;

Constraints:

- o DOJ does not want Treasury to conduct any interviews or have discussions with any of the participants, who may be potential witnesses; the prosecutors do not want us to generate additional Jencks, Brady or Giglio material or oral statements which could be used for impeachment.

PROB: our information will be limited to what the TRS ask, which will focus on the gunfight and not necessarily on the other major topics in which we are interested; we may not have the first-hand information that we need to conduct our review;

-- at some point we are going to have to interview the crucial witnesses and perhaps may have to take statements; while we may be able to wait for some of them to have testified in the criminal trial, the passage of time will dim memories;

- o DOJ does not want us to make any findings or draw any conclusions from what we review; the prosecutors are concerned that anything negative, even preliminary, could be grist for the defense mill;

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PROB: some sort of "findings" are inevitable as we work our way through the materials and will be necessary in order to make decisions about next steps in the review process

-- the Review Board will expect at least periodic reports on our efforts to date and briefing on "what we have learned" so far; these reports will be important to guide them in the exercise of their responsibilities;

o DOJ does not want us to generate gratuitous "expert witness" materials; the prosecutors are concerned that these people won't have all the facts upon which to base a thoughtful opinion and could play into defense hands (e.g. Weaver).

PROB: we are going to have to educate ourselves about how these operations are planned, approved and executed and what the "common denominator" is among the law enforcement agencies.

-- the Review Board will expect some type of benchmark against which to measure the actions of ATF; to the extent they will be recommending specific changes in procedures or modifications of policies, these recommendations should be supported expert opinion.

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Mr. BARR. Do you have those?

Mr. SIMPSON. No, sir, I don't.

Mr. BARR. OK, let's get those distributed, please.

Here is a copy right here. If you want another one, here is another one.

Mr. SIMPSON. Yes; I guess I do have the documents to which you refer.

Mr. BARR. While those documents are getting to you, lest any members of this panel think the statements by the gentleman from New York that it is standard operating procedure in the Department of Justice to direct, especially in writing, but in any form, to agents of this Government attempting to conduct an investigation to determine what went wrong in a shooting incident, that it is standard operating procedure to write memos saying, stop interviewing people, stop gathering evidence and don't take notes, that is wrong. That is not in my experience as a U.S. attorney appropriate.

And I would also direct you all's attention if you think otherwise to testimony 2 days ago by Assistant U.S. Attorney Bill Johnston, a disinterested party from our standpoint, who testified he was the one that was conducting this investigation when he saw these documents. He said, absolutely not, this is not the way the system ought to operate. An investigation such as ATF was attempting to conduct was a search for the truth.

These documents reflecting explicitly directives from the Deputy General Counsel to stop interviewing people and to be fearful that anything critical of ATF might get into the defense hands or might get out is reason to stop an investigation that was directed very appropriately, that that is wrong.

What I would like to request from you, Mr. Simpson, is if you could take a look first at document No. 17722, which is dated April 9, 1993, and ask you if you are familiar with that document?

Mr. SIMPSON. No, sir, I am not.

Mr. BARR. OK. I presume your answer will be different for document No. 18994 since it is directed to you.

Mr. SIMPSON. It is directed to me. It is a copy of an interagency e-mail memorandum.

Mr. BARR. OK. And are you familiar with that document?

Mr. SIMPSON. I am sure I have seen it, but I don't recall having seen it.

Mr. BARR. OK.

I would direct your attention explicitly to the second page under paragraph or a series of paragraphs labeled "constraints," where it says that the prosecutors do not want us to generate additional Jencks, Brady, or Giglio material or any oral statements which could be used for impeachment.

It goes on to identify a problem, that our information will be limited to what the TR's, I presume that means Texas Rangers, asked, which will focus on the gunfight and not necessarily on the other major topics in which we are interested, and then it goes on to say that passage of time will dim memories regarding the possibility of future interviews.

It concludes there on that page with a statement that the prosecutors are concerned that anything negative, even preliminary,

could be grist for the defense mill, and further justification for directing that interviews cease.

It goes on on the second page to reference the Weaver case, which I presume is the case out in Ruby Ridge. What questions, if any, does this raise in your mind as an ATF official at the time trying to conduct an objective series of investigations, the shooting review to determine, in fact, whether problems occurred that needed to be remedied, while witnesses had information fresh in their mind? Did this further your investigation or impede it?

Mr. SIMPSON. Congressman Barr, I was not involved in any way in the investigation. At this point I was completely out of it. I was no longer Acting Assistant Secretary.

Mr. BARR. OK. Then why was this sent to you, then, sort of gratuitously?

Mr. SIMPSON. Frankly, I think that is a good question. I think it was gratuitous.

Mr. BARR. Let me ask you, then, if you had in fact received this, would this be the sort of document that would lead you to the belief that the Treasury Department was interested in a thorough, objective search for the truth or was concerned more about bad publicity and information possibly getting to defense attorneys in its search to determine whether or not what happened on February 28 was appropriate or whether problems occurred?

Mr. SIMPSON. Congressman, most of what I understand about this document I picked up in the last few seconds, and my impression of it is that it is the advice of our counsel that we should postpone or defer our internal investigation until the Justice Department's criminal investigation is complete. I certainly defer to you as to what Justice Department policy is, but my impression is that it is standard for the Justice Department to ask agencies to defer internal investigations.

Mr. BARR. Let me tell you, this document does not reflect Justice Department policy, and it is not the sort of document that a U.S. attorney or an assistant U.S. attorney interested in a search for the truth would ever send out.

Mr. ZELIFF. The gentleman's time has expired. Mr. Taylor from Mississippi will have 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman. I would like to remind everyone that these witnesses, as have all witnesses, have been chosen by those who seek to discredit the ATF. Having said that, I will now ask the same question that I have asked every panel, does anything that you have seen, heard, or read justify the murder of 4 ATF agents and the wounding of 20 more by David Koresh and his followers? Since you have been chosen by those who seek to discredit the ATF, please feel free to answer this.

Mr. HIGGINS. Could I only say one thing, I hope I wasn't chosen by someone who seeks to discredit the ATF.

Mr. TAYLOR. And the law enforcement community.

Mr. HIGGINS. I love a lot of those people still, and they are my great friends.

Mr. ZELIFF. And I would hope, and certainly many of us here would agree that we would hope that this is not part of any casual comments. Go ahead.

Mrs. THURMAN. Give us a little more time.

Mr. HIGGINS. Nothing could ever justify that period.

Mr. TAYLOR. Mr. Simpson.

Mr. SIMPSON. I am sorry, Congressman, no, I am also not here at the suggestion of the National Rifle Association as far as I know, and certainly I don't think it was proper for four ATF agents to be shot at.

Mr. TAYLOR. Mr. Cuyler.

Mr. CUYLER. No; nothing would justify that, Congressman.

Mr. BENTSEN. Certainly not.

Mr. TAYLOR. Thank you. Thank you, Mr. Chairman. Since Ms. Thurman was kind enough early on to give me the opportunity to try to subpoena those people who could paint a true picture of the events leading to the arrest, I was unsuccessful because the majority voted against it.

I now yield my time back to Mrs. Thurman.

Mrs. THURMAN. Thank you.

Mr. Higgins, let me ask you, last night one of our witnesses who had been involved with the CSA, which was I guess the similar situation in Arkansas, correct, you were there then at that particular time, so you have some experience with a situation like this, heavily armed, kind of dangerous. Quickly, was there a report done on that particular incident?

Mr. HIGGINS. Well, I think there probably was, but I don't know where we would find it, but I am sure there was an after action or a review report done on that.

Mrs. THURMAN. OK. The reason I ask that is really based on a comment that Secretary Bentsen made, and that was the fact that in the report that has been written, which I know you somewhat disagree with, but there were several mentions of the ingredients of what would make a good plan or raid as versus what might not, and it talks about intelligence gathering, it talks about the homework. There was a section in here that talked about the weak link in the investigation was the undercover, and then it goes on to say that this designation meant that ATF's headquarters would automatically be again monitoring its progress and surprisingly there was little input or direction from above, which leads me to believe that kind of the higher—but you said, I believe, to one other answer that you really wouldn't have had much contact with that, that they didn't need to come to you for everything; is that correct?

Mr. HIGGINS. Well, I don't believe, and most people in the ATF probably share, that the source of all wisdom is in headquarters, that we had—some of our best planners happened to be in this area and assisted in the plan, but that may be a part of the report I don't agree with. I don't agree that there wasn't oversight. I think Mr. Harden and others were actively involved in helping come up with a plan that they thought would work.

Mrs. THURMAN. They talked about the poor case management and such within the report. I am just trying to get to something here because part of what this hearing is supposed to be about is for this never to take place again, so to get to that and to look at those things.

Secretary Bentsen, you made a very outstanding remark, I thought, based on something that Mr. Higgins had said that had changed. Can you tell us, this committee, what you believe based

on the report and the suggestions it has made that you as Secretary, what changes you made that you believe better prepare us now if a situation like this should come up again.

Mr. BENTSEN. Well, we established a very direct communication by the Assistant Secretary of Enforcement with the agencies under his purview and his jurisdiction, and this situation of not having to come to Treasury or to the supervisors, in effect, when they have such a raid, particularly anything of this magnitude.

What was sent to Treasury, I thought, was something more to be able to respond to press inquiries. That is the way it started, but Mr. Higgins has testified that for 11 years they felt that they did not have a legal obligation to have things cleared by Treasury. I think he is right on that. We certainly changed that one. Now that has to be done.

Mrs. THURMAN. Is that all?

Mr. BENTSEN. No; I have some more detail I will be happy to put into the record at some point.

Mrs. THURMAN. If that is OK with this committee because I think, Mr. Chairman, that that is a very important part of this.

Mr. BENTSEN. I would be happy to do that.

Mrs. THURMAN. That we have a report, that there have been changes made, and that the Secretary has, in fact, taken into account what was already looked at.

Mr. ZELIFF. Without objection.

[Information in subcommittees' files.]

Mr. ZELIFF. OK, Mr. Ehrlich from Maryland for 5 minutes. Then we are going to break for a series of votes, a 15-minute vote and three 5-minute votes. We will recess and come back here 5 minutes after the last vote. Mr. Ehrlich from Maryland.

Mr. EHRLICH. Thank you, Mr. Chairman. It is my intention to yield to Mr. McCollum from Florida, but before I do, I would just like to reiterate a point that has been made by many of my colleagues today.

You all know about the spin control, each party, and the fact that this is a very popular sport in Washington; it appears to be, anyway, in Federal office and all of that. Many of us on both sides of the aisle, but particularly on this side of the aisle, are interested in facts and conclusions therefrom, and just for the record, Mr. Chairman, I would like to share a source of frustration.

It appears from the testimony we received to date that ATF knew this was not a drug case. That seems to be a fact. There was no evidence of drug use with respect from evidence from undercover personnel. There was nothing in the affidavit concerning drug use. The dynamic entry used was 180 degrees removed from the kind of entry you would expect if a meth lab was under investigation, et cetera.

The second fact is that the military was used, the military was used with respect to this raid. Army special forces command spent 3 days training ATF agents for the raid. National Guard planes were used. Helicopters, et cetera. They are two, in my view, irrefutable facts.

I read in the paper today, it is kind of interesting, concerning testimony with respect to the first 2 days of this hearing that the GOP was rebuffed in their attempt to show ATF misled the mili-

tary in order to receive military support. That is a source of frustration. We are not here to spin, but we are here to tell the American people and to inform the American people about facts concerning this incident, and the American people can make up their own mind.

With that, I will yield to Mr. McCollum.

Mr. MCCOLLUM. Thank you for yielding. I have a couple of quick questions, particularly for Mr. Simpson.

Mr. Simpson, did you talk to anybody besides Mr. Higgins when you were making the decision? I mean, anybody in the line besides Mr. Higgins when you were making the decision to go ahead with this raid, after you had first canceled it.

Mr. SIMPSON. I had been talking to Mr. Noble, and—

Mr. MCCOLLUM. I meant in the line, like Mr. Hartnett or any other officers. You just talked directly with Mr. Higgins, right?

Mr. SIMPSON. That is correct, sir.

Mr. MCCOLLUM. Did you, at any time in giving instructions, say to Mr. Higgins that under no circumstances do you go ahead with this raid if the element of surprise is lost?

Mr. SIMPSON. No, sir. Mr. Higgins gave us certain assurances, one of which was that there was an informant inside the compound who would be able to let the team leaders know if anything had changed, and we understood from that that if there were any changes that jeopardized the success of the raid, it would be called off.

Mr. MCCOLLUM. You understand that the Treasury report says that Mr. Higgins and ATF, were instructed by Treasury not to proceed if the element of surprise was lost. You did not explicitly make that instruction from what you are saying?

Mr. SIMPSON. I did not, Mr. McCollum. I think there may be different views about how explicit that was from the nature of the conversation we had.

Mr. MCCOLLUM. Excuse me, but it was very explicit in the Treasury report, and it doesn't sound nearly so explicit from what you are saying.

Mr. SIMPSON. I am only sharing with you my recollection, Mr. McCollum.

Mr. MCCOLLUM. I understand. You are the one on hand. I am not trying to criticize you. I am just trying to express that concern and frustration.

Mr. Cuyler, at any time did you overhear or participate in transmitting any instructions that said don't proceed with this raid if the element of surprise is lost?

Mr. CUYLER. No, sir; I did not.

Mr. MCCOLLUM. Mr. Higgins, what did you hear? Did you ever hear any instructions from anybody higher up than you in Treasury, don't proceed with this raid if the element of surprise is lost?

Mr. HIGGINS. Well, in fairness, it is not a yes or no answer. In fairness, the suggestion that since we had somebody in there we would put the control on that when we had the undercover officer go in, if he saw anything that was abnormal, out of the ordinary, more than just—



Mr. MCCOLLUM. Did anybody tell you that? Did anybody say if this undercover agent sees anything abnormal just call this raid off right now; did Mr. Simpson tell you that?

Mr. HIGGINS. Mr. Simpson didn't tell me that.

Mr. MCCOLLUM. I am just asking you what Treasury told you.

Mr. HIGGINS. He didn't tell me that.

Mr. MCCOLLUM. Did you tell Mr. Hartnett that?

Mr. HIGGINS. I told Mr. Hartnett to tell the people in Waco, Houston, not to go ahead with the raid, the orders we were operating under was that if the undercover officer saw anything unusual or out of the ordinary, don't go ahead with the raid.

Mr. MCCOLLUM. Did you say to him, if the element of surprise is lost, get the heck out of Dodge?

The reason I am asking that question is that speed and safety are what Mr. Chojnacki yesterday said were the considerations, and that the question of surprise was secondary to this process. They didn't expect absolute surprise, and nobody told them they couldn't go in if there wasn't surprise. They didn't expect to be ambushed, but surprise was sort of a secondary consideration. Did you tell him, don't go in if you get surprised?

Mr. HIGGINS. I went way beyond saying don't go in if you don't have the element of surprise. To me, that is a given; you don't do a raid when you are expecting people to be in various parts of the compound.

Mr. MCCOLLUM. You assumed that they would know that?

Mr. HIGGINS. I think that is a safe assumption to make, yes, but I assumed that.

Mr. ZELIFF. The gentleman's time——

Mr. MCCOLLUM. You didn't tell them that?

Mr. ZELIFF. The gentleman's time has expired. We will now recess until 5 minutes after the last of the series of three or four votes.

[Recess.]

Mr. ZELIFF. The subcommittees will now come to order.

Mr. Secretary, we are doing everything we can to move this forward. I hope that we can do it in time to allow you to catch your plane. We will do our best.

Mr. BENTSEN. I missed the next one, but I am still hoping for the 5 now.

Mr. ZELIFF. OK. Well, we will definitely get you out of here by then. I apologize.

Mr. Heineman, the Chair yields to you for 5 minutes.

Mr. HEINEMAN. Thank you, Mr. Chairman.

I would like at this time to congratulate the gentlelady from Houston, TX, for her line of questioning. It was like a breath of fresh air to hear that coming from the other side.

I would like to direct my attention and your attention to something that I started yesterday with a different panel and will pick up today, Mr. Cuyler. Again, referring to your interoffice memorandum to Mr. Langan. Where did you get the information to prepare this?

Mr. CUYLER. I got it from a briefing I attended on February 11 and then from talking with the various division chiefs in our headquarters.

Mr. HEINEMAN. But it does indicate in here that there is a well-reasoned, comprehensive plan that has been approved which allows for all contingencies. Is that an inaccurate characterization?

Mr. CUYLER. I don't believe it is inaccurate. That was my belief at the time that I prepared this.

Mr. HEINEMAN. I don't believe it is inaccurate, either. For an operation this large, which according to this plan here indicates that INS will participate and the military will participate, and being in law enforcement for 38 years at all levels, I know what you have to do to conduct a raid, especially something of this size. You can't possibly sit down and plan without having a documented plan, especially when you have to deal with the hierarchy and in this case in Washington, DC, and it is like chasing grasshoppers.

I have been looking to get someone to say yes, there was a plan, but here in the book it says that the plan was never committed to paper in any detailed form. I don't believe that. I am not attributing that remark to you, but when it comes to trying to identify who was responsible for what, I find it very difficult, especially when I hear today that the administrative review of Sarabyn and Chojnacki relative to being reinstated was destroyed.

Is anyone here at this panel familiar with the personnel policies of the Federal Government, disciplinary personnel policies of the Federal Government relative to a personnel act about disciplinary matters?

Mr. CUYLER. I am not familiar, Congressman.

Mr. HEINEMAN. Can anyone tell me the personnel——

Mr. BENTSEN. Let me comment on that. I have been handling this. What it states:

The ATF did not seek destruction of any records related to the personnel action. Copies of all of the evidence has been preserved and submitted to the subcommittees. Copies of the entire official disciplinary file were provided to the subcommittee on July 7.

During settlement negotiations, counsel to the employees sought the removal of references to the disciplinary actions from certain other personnel files. The agreements have been implemented in a fashion that is entirely consistent with the requirements of the Office of Personnel Management directives.

Mr. HEINEMAN. You can stop there, Mr. Secretary.

Mr. BENTSEN. Copies of all expunged——

Mr. HEINEMAN. Thank you for enlightening me. I think it is very important that we know that personnel records were not destroyed, and, in fact, that there is probably current litigation or pending litigation or thought to criminal actions relative to the two supervisors. I am not commenting on that.

I agree with Mr. Simpson and Mr. Higgins, they probably should not have been fired in the first place. Administrative sanctions could very well do, unless we knew that they intended the results. But the enormity of the plan, the fact that there was 75 to 80 agents involved in this, was there any representative of higher authority down at the raid site from Washington, DC, at the time of the raid?

Mr. HIGGINS. I believe there was, but I am not sure who from the headquarters office was there. I think some of the panel members in maybe the next panel of ATF people would be able to provide you the name or it could be provided to the committee. I don't know from my knowledge or remember who that was.

Mr. HEINEMAN. Thank you.

[Information not received by time of printing.]

Mr. HEINEMAN. It was testified here to on the first day by an author of a book or a periodical, and I am not quite sure which one it was, that Chojnacki and Sarabyn kept their mouths shut. Now, I don't know how to take that as it relates to their disciplinary matters. Do you have any idea what that may have referred to?

Mr. HIGGINS. No; I don't. Only they are under the same restrictions as other ATF employees, and that is they are not to discuss this with anybody who doesn't have a right to know, so whether or not they would discuss it, for example, with an author of a book, I doubt that. In fact, I am pretty sure they would not. If that is what he had reference to, I think that was entirely proper, to, quote, keep their mouths shut. I think they were being reasonable.

Mr. HEINEMAN. OK. I will yield back my time, Mr. Chairman.

Mr. ZELIFF. Thank you very much. The Chair yields to Mr. Bryant of Tennessee for 5 minutes.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman.

Mr. Higgins, as you may or may not know, I was a U.S. attorney during the Bush administration and as such served at the same time that you served as the Director of the ATF, and of course Mr. Barr also was a U.S. attorney in Georgia, so we have worked together for the same administration at various times. I wanted to ask you, of course, it was brought out in an earlier examination that you were initially appointed as the ATF Director by President Reagan; is that correct?

Mr. HIGGINS. Actually by the Secretary of Treasury during Reagan's term.

Mr. BRYANT of Tennessee. During the Reagan term, but then you carried over through the Bush administration.

Mr. HIGGINS. Yes; but I would also like to point out I have had 32 years in ATF. I started as an ATF employee on the bottom. So I don't consider myself to be a, quote, political appointee.

Mr. BRYANT of Tennessee. Within the structure of the Treasury Department, would you tell me ultimately where the buck stops? Who is your boss there at that level? Would that be the Secretary?

Mr. HIGGINS. I think the buck stops with me, but also my immediate supervisor at the time of the raid would have been John Simpson. The immediate supervisor for the position, I believe they have changed the titles, but I think it is now the Under Secretary of Treasury for Enforcement.

Mr. BRYANT of Tennessee. And beyond Mr. Simpson was whom in the structure?

Mr. HIGGINS. Would have been the Deputy Secretary, and then the Secretary.

Mr. BRYANT of Tennessee. OK. Now, Mr. Simpson was acting at that point?

Mr. HIGGINS. That is correct.

Mr. BRYANT of Tennessee. And Mr. Noble ultimately took that position?

Mr. HIGGINS. That is correct. He was a designee, I believe, at that point.

Mr. BRYANT of Tennessee. And Mr. Altman was the Deputy?

Mr. HIGGINS. Correct.

Mr. BRYANT of Tennessee. And then of course Secretary Bentsen was in that position?

Mr. HIGGINS. Right.

Mr. BRYANT of Tennessee. I believe there has been testimony that he was there since about the inauguration, around January 20, maybe some days later, about a month, though?

Mr. HIGGINS. Right.

Mr. BRYANT of Tennessee. Had Mr. Altman been there about a month or so?

Mr. HIGGINS. I am not the best person to ask that. Mr. Secretary probably knows the answer to that.

Mr. BRYANT of Tennessee. When I say about a month, I am referring to the date of the raid, February 28.

Mr. HIGGINS. I believe that is about right. I just don't remember when Mr. Altman came.

Mr. BRYANT of Tennessee. When did you first meet with the Secretary to discuss anything about your agency, the ATF?

Mr. HIGGINS. I don't remember any briefings with the Secretary. I haven't gone back to look at my documents. Probably in that first month, month and a half, I don't remember any meetings with him. The only interaction we really had during the transition would have been with Mr. Simpson.

Mr. BRYANT of Tennessee. Are you saying that you never had met with Secretary Bentsen prior to this raid?

Mr. HIGGINS. I didn't go back and look to see, but I knew him very little at that point. I can't remember having gone to a staff meeting while he was there. There were informal staff meetings from time to time, but I don't remember specifically today having been at one with him.

Mr. BRYANT of Tennessee. Had you ever met with his Deputy, Mr. Altman, before this raid?

Mr. HIGGINS. I don't believe I knew Mr. Altman until then. I knew who he was, obviously.

Mr. BRYANT of Tennessee. Well, I am a little confused here. You are saying that you were the Director of the ATF, which we all know is a very significant, powerful element of the Department of Treasury, and you had not met with your ultimate boss, the Secretary, for the 30 days or so?

Mr. HIGGINS. I don't believe so, other than maybe to shake hands, and I don't even remember doing that. It is interesting that those who think there is some giant conspiracy in the Government don't realize how little we knew each other. I don't remember doing more than shaking hands, if we did that.

Mr. BRYANT of Tennessee. Who within the organizational structure, who was the highest person that you had met and talked with?

Mr. HIGGINS. I met with Mr. Simpson a lot. He was the highest person. That is generally the way things worked. We were right in the middle of a new transition, and this was probably within the first month, month and a half.

Mr. BRYANT of Tennessee. Was there any process or procedure available to you as the Director of the ATF to brief either the Deputy or the Secretary?

Mr. HIGGINS. I could have called them and said, yes, I would like to brief you on something. I think they were accessible, yes.

Mr. BRYANT of Tennessee. But there was no routine process? This was not regularly done at that point?

Mr. HIGGINS. No routine process, although most Secretaries at some point set up a system where there is a regular, either every week or every 2 weeks, meeting with bureau heads.

Mr. BRYANT of Tennessee. At this point I would yield back to Mr. McCollum or Mr. Zeliff if they have any questions.

Mr. MCCOLLUM. You yield to me?

Mr. BRYANT of Tennessee. Yes.

Mr. MCCOLLUM. Well, I just want to ask one question very quickly of all of this. I wonder, Mr. Higgins, if you could tell us if at any time during this process, and for that matter, also, Mr. Cuyler and Mr. Simpson, did Mr. Hartnett or anyone in ATF discuss at the level of Mr. Simpson or anyone in that range between you, Mr. Simpson and Mr. Higgins the efforts to arrest David Koresh off the compound, separate and apart from the arrest effort at the compound and the search that day?

Mr. HIGGINS. The day that I approved the plan within ATF, and I believe that was February 12, the first question I asked when presented a plan was, why don't we just arrest him somewhere away from the premises. The first question I asked, and that led into a long discussion about the things that they had looked into doing and the reasons they had concluded that it wasn't going to work, it couldn't be successful, and so now we were down to the remaining options, so, yes, it was discussed then, yes.

Mr. MCCOLLUM. Could Mr. Simpson and Mr. Cuyler respond as to whether that question was ever discussed with you by Mr. Higgins? Did you know about that or did that issue came up as a discussion point?

Mr. SIMPSON. No, sir, Mr. Chairman, there was no discussion of that.

Mr. MCCOLLUM. Mr. Cuyler.

Mr. CUYLER. No; there was no discussion with me on that.

Mr. MCCOLLUM. Thank you.

Mr. ZELIFF. The gentleman's time has expired. Mr. Souder, you are recognized for 5 minutes, the gentleman from Indiana.

Mr. SOUDER. I yield 2½ minutes to Mr. Barr.

Mr. BARR. I thank the gentleman.

Mr. Langan, if I could direct your attention to one of the documents that I certainly hope you have before you there, dated April 14, 1993, Treasury interoffice memorandum directed to you and to Mr. Simpson.

Mr. LANGAN. I don't have that document, sir.

Mr. BARR. Document No. 18994.

Let's get another copy out. We are going to run out of copies soon.

While that is being distributed, this is a memorandum from Robert McNamara dated April 14, 1993, to John P. Simpson and Michael D. Langan.

[See p. 555.]

Mr. BARR. As a matter of fact, Mr. Simpson, maybe you could—have you got one there?

You are familiar with the discussion that we had earlier about policies and procedures and what was attempted to be done in terms of ATF conducting its shooting review and then these documents start coming out directing that the interviews cease and that no records be taken, no notes be taken and so forth.

In your opinion, is that the appropriate procedure to be followed if there is an effort made to determine what happened in the shooting incident to gather the very best evidence possible while evidence in the situations are fresh in people's minds and to accumulate the data that is necessary in order to form an objective opinion as to whether or not something went wrong? Is this memo consistent with that?

Mr. LANGAN. Well, it is the normal process of the bureaus whenever—

Mr. BARR. Answer first, and then explain. Maybe we have a disagreement over what is the purpose of a shooting review.

Am I wrong in presuming that the shooting review, based on testimony we heard yesterday, is, in fact, a search to obtain data to determine what happened, what went wrong, if anything, so that—

Mr. LANGAN. That is what a shooting review is.

Mr. BARR. OK. Then are directives coming from the Department of Justice lawyers or the Department of Treasury lawyers directing that interviews cease, that no further evidence be gathered consistent with that objective?

Mr. LANGAN. I think it is consistent if there is an overriding interest.

Mr. BARR. Something other than a search for the truth?

Mr. LANGAN. No; I didn't say that. I think that—

Mr. BARR. Well, we have determined that that is the purpose of the review, and I am saying that they were trying to do the right thing, and I would think that the Department of Justice rather than sending out memos directing that interviews cease and the witnesses not be interviewed and that notes not be taken would be doing quite the opposite, and I am curious as to why they are taking this tack.

Mr. LANGAN. I was the receiver of the memo, and I can only surmise that the Department of Justice had good reason for wanting to be sure that the criminal trials proceeding didn't become compromised because of activity that would have been unhelpful.

Mr. BARR. Well, I am not sure how far we will get here, but this is—is it your experience that these memos came out every time there was a shooting review that took place?

Mr. LANGAN. No.

Mr. BARR. OK. Was there anything extraordinary about this situation other than the fact that it was a very large raid and people died that would lead you to the conclusion that the investigation should be curtailed?

Mr. LANGAN. That was extraordinary enough. This was an awful tragedy, and I think that they were making every effort to exercise precautions to make certain that—

Mr. BARR. That people were not interviewed?

Mr. LANGAN. No; to make—

Mr. BARR. That is what this directs. I am sorry, I better yield back some of my time, Mr. Souder's time back to him.

Mr. SOUDER. I yield the balance to Mr. Shadegg.

Mr. SHADEGG. The balance does not appear to be very much.

Secretary Bentsen, let me thank you very much for being here and for your service to the Nation. Let me then turn to a separate theme, and it is this notion that we are being beaten with over our head every single day, and that is that these hearings have no purpose, that they are a waste of time, and that no new evidence has come out.

Absolutely nothing further from the truth could be true. In point of fact, a tremendous amount of new information has come out as a result of these hearings, just as it should in an oversight proceeding, but it is important to point out that the implication here is that because David Koresh was evil we should not be conducting these hearings. That is an outrageous charge. You, Mr. Secretary, conducted a review, a review that is in this book, an important book to the American people, but a book that these hearings have revealed is only 70 percent accurate.

Mr. BENTSEN. I don't agree with that one at all.

Mr. SHADEGG. According to the testimony of the agents who dispute it.

Mr. BENTSEN. One of them was dismissed, I understand made that kind of a statement. I can understand their criticism as something where they have been found erring in their responsibilities and have been disciplined. I can understand that.

Mr. SHADEGG. The point being that the—

Mr. BENTSEN. I must tell you that in addition to that we have all kinds of comments, Wall Street Journal, New York Times, and the rest of it talking about the extensiveness, the detail, the amount of work that was done in this regard.

Mr. SHADEGG. The point is that we have an oversight obligation, the ends do not justify the means. The fact that Mr. Koresh may have been evil does not mean we do not have an oversight obligation, and the day in America when we refuse to look into the conduct of law enforcement agencies because in the end they went after a bad person is the day in America when tyranny rules. Thank you.

Mr. ZELIFF. Thank you. The Chair yields to Mr. McCollum for 5 minutes.

Mr. MCCOLLUM. Thank you, Mr. Chairman. I get to claim my own time now.

I want to follow up on one thing with you, Mr. Higgins. A moment ago you told me that you did have a discussion. Was it with Mr. Hartnett about arresting David Koresh off the compound?

Mr. HIGGINS. It was with Mr. Hartnett, actually the members who had planned the raid. I believe the case agent and his supervisor were there, so it was a discussion with a number of staff.

Mr. MCCOLLUM. When was that?

Mr. HIGGINS. That was, I think, on February 12. I believe the briefing for Mr. Hartnett was on the 11th, then I came down on the 12th to either approve or disapprove the plan.

Mr. MCCOLLUM. You said you instructed them. What were your words to try to get him off the compound?

Mr. HIGGINS. The first question I asked when they presented me with the option of the surprise entry, why don't we do more, why don't we try to catch him away because that was generally what we prefer in a situation like that. That was when they described to me the efforts they had made to initially try to do that and were unsuccessful. Then they felt like simply that that option was no longer a viable one and that was why they were recommending this other option.

Mr. MCCOLLUM. You didn't question them any further about ruses they might have tried to get him off the compound or what else they might have done? Wasn't it important to you, Mr. Higgins, that he be captured away from that compound if at all possible? Wouldn't that have been highly desirable in order to get him away from the rest of the group that was there?

Mr. HIGGINS. It was important to me. Whether I asked enough, you know, in hindsight, I could never have asked enough, but it was important to me. There were also other elements that explained to me about if you catch him off the compound, you still have the question of finding whether or not he is a—

Mr. MCCOLLUM. That is a very important question. Did you walk away from those meetings leaving them with the impression that it wasn't that important that they catch him off the compound, in fact, it might be better if he were still there and that they serve the warrant while he was in there? I can't get to the bottom of that with them so far, and I am curious about you. What was the policy? Were they to try to get him off the compound all the way up to the day of the raid or was that discarded on February 12?

Mr. HIGGINS. I think on the 12th of February that had been discarded because the decision on the 12th of February was to go with the entry plan that ultimately was tried and did not work.

Mr. MCCOLLUM. Were you aware, Mr. Higgins, when this raid took place that the undercover agents had an undercover house that had been operating for some time?

Mr. HIGGINS. Yes.

Mr. MCCOLLUM. Were you aware that they had had video reviews of what was going on at the compound, that photographs had been taken, and that at the time the decisions you were making with them on the raid just preceding February 28 with Mr. Simpson, those videos and a lot of those photographs had never been reviewed? Were you aware of all of that?

Mr. HIGGINS. No; I was not aware of all that.

Mr. MCCOLLUM. Were you aware, Mr. Higgins, that Mr. Gonzalez who was the undercover agent who had been in there was posing supposedly as a trade school student, as were all the others in the undercover house, but that they were driving new cars, they had pretty good clothes on, they were about 30, 40 years of age, they didn't look anything like trade school students, and that, in fact, this was not particularly a good operation going on out of there in any respect. I don't have time to go into the details. Were you familiar with the details of that operation, how they set up the undercover house and the quality of all this?

Mr. HIGGINS. I wasn't familiar with some of those details. Some of those details don't sound right. I doubt if they were there with



those expensive cars. If somebody described them with Rolex watches, if they did, they paid \$15 for them.

Mr. MCCOLLUM. I didn't say Rolex watches, I just meant they were 30, 40 years old, and the trade school was the cover and all that. Were you familiar with the details?

Mr. HIGGINS. No; I was not familiar with that detail.

Mr. MCCOLLUM. You weren't familiar with the details of what kind of undercover operation that was run.

I just find it incredible that this operation ran the way it did. I find it incredible, first of all, that we had the assault go on as it did, the raid that day as a dynamic entry. Considering the bumbling that went on with regard to the undercover operation, I think it is incredible that we had the raid go on as it did without more direct supervision on your part, Mr. Higgins.

I find it even more incredible, though, that it appears the Treasury Department all the way up through the Secretary really had no more knowledge than they did until as late as they did and when they did have that knowledge, that it never even got to the Secretary. You hadn't even met him in the time that he had been in office or, for that matter, his Principal Deputy. You hadn't even met him as the head of the ATF, the law enforcement arm of the Treasury Department.

All of this tells me something was really, really amiss, more than the Treasury report has said to us today. They have some criticisms, some of which aren't valid, some of which are, but they didn't criticize themselves, and somebody was wrong, wrong, wrong up through that process in that organization. I can't help but think that there was a possibility there that lives could have been saved if things had just been different with the operation. I don't condone David Koresh, but I don't condone this operation, either. I don't condone what I see, and I think it is very understandable why the American public thinks it smells. Thank you.

Mr. ZELIFF. By unanimous consent-agreement on both sides of the aisle here, there will be a final 5-minute wrapup on each side. The Chair now yields to Ms. Jackson Lee from Houston, TX.

Ms. JACKSON LEE. Mr. Chairman, I thank you for that, and I thank again the gentlelady from New York.

Mr. Higgins, I didn't hear you use the term condone either all aspects or did you condone everything that happened that resulted in this tragedy? I have listened to the previous questioner question you in an incredulous manner. Did you testify today that you condoned everything that occurred, sir?

Mr. HIGGINS. Well, I think I got a have you stopped beating your wife type question. I thought what he gave was more of a statement, not a question. That is his opinion.

Ms. JACKSON LEE. Did you condone, sir, everything that occurred in this situation, this tragedy?

Mr. HIGGINS. Absolutely not. There were mistakes.

Ms. JACKSON LEE. So there were problems and they need to be corrected; is that my understanding?

Mr. HIGGINS. Absolutely.

Ms. JACKSON LEE. Let me also ask you and just clarify again, and I am not trying to be the lawyer for the State of Texas, but

let me understand that you indicated the State of Texas cooperated in terms of a request made by your department?

Mr. HIGGINS. Yes; they did.

Ms. JACKSON LEE. Let me also ask the question that with respect to your line officers and their cooperation with the military, is it my understanding that in terms of what they did that you perceived them to have tried to follow guidelines, regulations, not saying they did, not saying that they were successful, but in your review you thought they tried?

Mr. HIGGINS. I think more than tried. I think they did, so when I heard today that somebody said they had violated something or lied, I think that is an outrageous allegation. I hope somebody will investigate that because I don't believe they lied.

Ms. JACKSON LEE. Before my time runs out, let me ask you as a professional how you can correct the coordinating aspect, FBI, you, and others, and that is my last question.

Mr. HIGGINS. You probably don't have enough time for my answer. I think that the present Secretary of Treasury is doing a good job improving coordination within so that the kind of things where we don't have those meetings and we would go that long don't take place, and I think the entire community is working closely.

Ms. JACKSON LEE. And we can improve on that, and I thank you. I would like to yield my remaining time to the gentlelady from New York. Thank you very much.

Ms. SLAUGHTER. And I thank you. I think it needs to be reiterated that we have had testimony here that in previous actions by the BATF they had no connection with the top levels of the Treasury Department; is that correct? That this was not unusual, and that indeed Secretary Bentsen as Secretary of Treasury has changed that now? Isn't that correct?

Mr. BENTSEN. That is correct.

Ms. SLAUGHTER. One of the other things that is continually said here is talking about how much better it would have been to arrest Koresh off the compound. I frankly am surprised that anybody would ever have even considered that. You did understand that he had a group of followers who would do anything for him, the lamb of god, that if anything were to happen to him that you would have had some serious troubles on your hands. In addition, I understand that it is much better if you want to examine a premises, that you want to serve a search warrant at that premises so that no one has an opportunity to destroy the evidence that you are going in after; isn't that correct?

Mr. HIGGINS. Yes.

Ms. SLAUGHTER. What possible gain would you have had in this action to have arrested Mr. Koresh off the premises of that compound? What would that have gotten for you?

Mr. HIGGINS. We would have still had the difficult job of serving the search warrants, and with them knowing we were coming it would have been a dangerous situation then.

Ms. SLAUGHTER. Do you believe it would have been safer for BATF agents to walk up to that door after you had Mr. Koresh in custody?

Mr. HIGGINS. It would have been a lot safer for them in theory. I think in practice, no, because I think there were a lot of people in there who were violent. He didn't fire all the shots that day.

Ms. SLAUGHTER. Correct. And did you not have an understanding, Mr. Higgins, was there not a complete understanding, I hope, by the BATF agents that this was a group, you had had enough contact with them, and I know Ms. Sparks did, to understand that Mr. Koresh's followers were trained precisely to protect him and that even little children were known from the day they were brought in there that Armageddon was coming, that the Babylonians I believe were coming, so when you Babylonians walked up to the door, is there some reason to believe that if Koresh was in a county jail somewhere that you would have been one iota safer?

Mr. HIGGINS. Not at all.

Ms. SLAUGHTER. You know, I really hope that we can nail that down on this hearing because it continually comes up, that he could have been taken somewhere else and avoided all this. I don't think there is one scintilla of evidence of that, and I certainly want that on the record, and I hope you will all agree in this last moment.

Do you all agree with that?

Mr. Langan.

Thank you very much.

Mr. ZELIFF. Thank you.

Mr. Hyde for 3 minutes, followed by Mr. Buyer for 2 minutes.

Mr. HYDE. Thank you, Mr. Chairman.

I am trying to nail something down that I started to get into this morning. I read from an article that said two unmarked cattle trailers drew up in front of the buildings at Mount Carmel and disgorged more than 70 agents dressed in dark commando costumes, complete with ski masks and carrying guns, and I was told that there were no ski masks, and I would like to know from somebody who has knowledge whether they wore head gear. If it wasn't a ski mask, was it one of those Darth Vader riot helmets? Did they have something on their faces, Mr. Higgins?

Mr. HIGGINS. I am sure they were wearing Kevlar helmets for their protection. Had they not have been—

Mr. HYDE. I am all for it. I am just trying to get the picture.

Mr. HIGGINS. Yes; Kevlar helmets which would protect them.

Mr. HYDE. I am familiar with serving subpoenas and serving warrants and usually a couple of deputy sheriffs walk up, but when two flatbed trucks disgorge 70 people with Darth Vader or whatever, you know it is kind of—they call ballistic missile defense star wars, I will call this Darth Vader with commando uniforms on, it is a little—create a little apprehension, especially if you believe the forces of Babylon are coming for you. I would think they were here when I saw that. So I am just trying to nail that down. OK.

Now, Secretary Bentsen, this memo of April 15 from Roger Altman to you, in reading it, it is pretty interesting. It says "Ron Noble informed me that the AG is weighing a request from the FBI to use an advanced form of teargas on the compound. Among other things this gas doesn't dissipate."

Now, in the last paragraph it says: "My rough guess is she won't," meaning the AG, "OK this. The risks of a tragedy are there,

and if the FBI waits indefinitely, Mr. Koresh eventually will concede."

Now, my question to you, Mr. Secretary, is when you got this, I understand that the next call was Janet Reno's, not yours, that was outside your purview, that it was her decision, we know that, but did you think enough of the information in here to call somebody at the White House and discuss it with them? Did you choose to weigh in and give them the benefit of your sagacity on a thing like this or did you just say, hey, it is her call.

Mr. BENTSEN. Mr. Chairman, we had been very much involved in the process, and obviously some mistakes had been made by the ATF, sincere mistakes, but mistakes in judgment. At this point we were not in the decisionmaking at all. It was now totally under the FBI and under the Department of Justice, and that is where it was, and that is where we left it. I was assured and I know that those things had been given consideration by them, that they had obviously conferred with experts in that regard.

Let me make one other comment. The statement was made earlier that, in this report, that we did not criticize ourselves. That is not correct.

Mr. HYDE. Mr. Chairman, I don't want my time—I don't want to foreclose you, but I have a limited time.

Mr. BENTSEN. I want to answer some of the charges that were made.

Mr. HYDE. I didn't make it.

Mr. BENTSEN. I agree.

Mr. HYDE. I am just simply trying to find out, then, you did not, after reading this document, weigh in with anybody? You just put it aside and said it is up to Janet Reno, right?

Mr. BENTSEN. That was her jurisdiction, her responsibility.

Mr. HYDE. We know that. So you did not.

Mr. BENTSEN. I went on with my other responsibilities.

Mr. HYDE. Right, you did not.

One last little comment. It seems to me that your agencies, ATF and for that matter the CIA, have a problem getting rid of people that ought to be fired, you can't fire them, the EEOC makes you take them back, you can, maybe, demote them, but getting rid of people who have screwed up and cost, maybe, lives even, which happened here, you really have a problem getting rid of them; don't you?

Mr. BENTSEN. Mr. Chairman, they were demoted; they resigned. Some of them were given totally different responsibilities. Action was taken, substantial action.

Mr. HYDE. And how many stayed on the payroll who were disciplined?

Mr. BENTSEN. Let's see. Those that appealed to the Merit Appeal Board stayed on the payroll. Their badges were taken off of them, their guns were taken off of them, and their responsibilities were changed substantially.

Mr. HYDE. But everybody who appealed stayed on, right?

Mr. BENTSEN. Two.

Mr. HYDE. There were two. Thank you.

Mr. BUYER. Mr. Chairman, I know Mr. Hyde took my 2 minutes, but could I ask unanimous consent for 1 minute?

Mr. ZELIFF. OK. Without objection so ordered.

Mr. BUYER. I have one question, Mr. Higgins. Yesterday we went over go, no go procedures. Is it true that the code word for the go procedure was showtime? Is that true?

Mr. HIGGINS. You had the people here yesterday who knew what it was. I don't know what it was.

Mr. BUYER. Would you look into that for me and let me know if it really was showtime? I find that pretty offensive.

Mr. HIGGINS. The great thing I thought about retirement is, those are their problems now, but I will ask somebody to do that.

Mr. BUYER. Well, good try. That comes under your jurisdiction.

Mr. ZELIFF. The gentleman's time has now expired.

I have one question. I know there are more people that have questions for you, Mr. Higgins. Is there any chance that you would be willing to join the panel on Monday morning at 9:30?

Mr. HIGGINS. I am supposed to be working for a living on Monday. No. At some other time, fine, but I am going to be gone until Tuesday afternoon.

Mr. ZELIFF. That is fine. Mr. Secretary, members of the panel, we thank you very much. It's has been a long morning. We appreciate your inputs. We hope we can get to the bottom of this. Thank you.

If this panel would please leave and the next panel start proceeding to the table. Will the next panel please come forward?

In the interest of time, I will start to introduce them. To my left, Joyce Sparks, Texas Department of Child Protective Services; George Morrison, Los Angeles Police Department; Tim Evans, attorney; John Kolman, formerly with the Los Angeles County Sheriff's Department; Victor Oboyski, president, Law Enforcement Officers Association.

Are all members of the panel here?

It is customary that the witnesses be sworn in to the subcommittees. If you will stand and raise your right hands.

[Witnesses sworn.]

Mr. ZELIFF. I heard an affirmative answer from all members of the panel.

The Chair recognizes Mr. Clinger from Pennsylvania for 5 minutes.

Mr. CLINGER. Mr. Chairman, I am pleased to yield my 5 minutes to the gentleman from Indiana, Mr. Souder.

Mr. SOUDER. Thank you.

Ms. Sparks, I understand you have had conversations with a Fran Haga, who I guess is with the NRA. This was not part of our committee investigation, and I am sorry that someone falsely represented themselves to you. Will your testimony today be influenced by those conversations and things that you wouldn't have said otherwise?

#### **STATEMENT OF JOYCE SPARKS, TEXAS DEPARTMENT OF CHILD PROTECTIVE SERVICES**

Ms. SPARKS. No.

Mr. SOUDER. Thank you very much.

I also want to state for the record that our job in this committee is an oversight of the function of Federal agencies, and we don't

have jurisdiction over child abuse cases, and that, regardless of how repulsive and wicked an individual is, and I can't say that I have read of anybody worse than David Koresh, we don't have jurisdiction over that. But let me tell you that we are pleased with your dedicated commitment to those children. You persisted in that case.

One of the frustrating things in child abuse is that many people such as the mothers in this case and others apparently would not grant you interviews, would not file charges. One of the most difficult things in the protection of children is that you can't go forward with many of these cases unless somebody will come to you and be willing to go to trial.

It also appears, at least you allege, that local law enforcement agencies you feel were tipping them off that you were coming, which is not a regular problem, but a problem we have around the country with people doing that.

I also read in your testimony that even Kiri Jewell, who was so brave here the other day, wouldn't testify, which shows how hard it is to pursue such cases. I have worked many years on the child abuse issue, and I find the whole thing repulsive and based on what we have seen—but that is not what we are doing here.

I would like to ask you a few questions related to the raid. Could you describe how you felt about the raid, and was the Government considering the best interests of the children when they went in?

Ms. SPARKS. I personally think the raid was a mistake. I have been pretty opinionated about that. Once the raid started the fire was inevitable. It set into motion what he would construe as the fulfilling of his prophecy. So once that happened, children were going to die.

Mr. SOUDER. There is a quote, "But in the end the last comment I had from Janet Reno was when I said I want you to tell me once more why you believe we should move now rather than wait some more. And she said, it is because of the children." Do you think that that is a fair statement?

Ms. SPARKS. Well, we recovered an arsenal of weapons, but we lost 20 children. I would say there is a flaw in that plan.

Mr. SOUDER. That was a statement from President Clinton. You said in your testimony that when you saw the ladders and you saw the raid occurring you knew the children were going to die, is that correct?

Ms. SPARKS. That is correct.

Mr. SOUDER. What evidences and what had you heard that led you to believe—can you elaborate why you believe that this type of a raid would result in the death of the children?

Ms. SPARKS. I had talked with David Koresh many times. Initially in my investigation I tried to keep the biblical references that he continued to want to give separate from my investigation. He repeatedly told me that you can't understand me unless you understand what I believe, and I came to understand that, so I started watching how his beliefs manifested in his actions. It was real clear—I mean, he said the enemy will surround the camp, and the saints will die. And that was real clear. There will be blood and fire, an explosion at the end. And he believed that, and the people that followed him believed it as well. So once you set in motion the

enemy surrounding the camp, he and his followers would have believed that that was the end time.

Mr. SOUDER. If there had been longer time before they had gone in with the raid do you believe more of his nonbiological children could have been released?

Ms. SPARKS. No.

Mr. SOUDER. Do you believe those that were in there, regardless of what happened, were going to remain in there?

Ms. SPARKS. I think that at first I thought something might happen, and as I saw that it was not his biological children coming up—he believed you had to be with him at the last days. So he was sending out, probably as a delaying tactic, the other children.

Mr. SOUDER. And those were all out by the end?

Ms. SPARKS. Every child who came out was not one of his biological children.

Mr. ZELIFF. The gentleman's time has expired.

Mrs. Thurman is recognized for 5 minutes.

Mrs. THURMAN. Thank you, Mr. Chairman.

Good afternoon Dr. Sparks. We are glad you are here today.

On Wednesday we heard some testimony from Kiri Jewell, and I understand that you have talked with Kiri—I guess when she was down in Texas.

Ms. SPARKS. Yes.

Mrs. THURMAN. She talked about her molestation. Did his religious philosophy include having sex with minors?

Ms. SPARKS. He never said that to me. He was very cautious. But I did my homework. I studied when he asked me to, and Psalm 45 was a real important psalm to him, and it is the wedding psalm. So he was much too smart to tell me that he was doing that, but all of his teaching said that that was OK.

Mrs. THURMAN. So he did biblical references?

Ms. SPARKS. There are a lot of references in the Old Testament that would lead one to believe that it is OK.

Mrs. THURMAN. For how long did you stay in contact with Mr. Koresh?

Ms. SPARKS. My initial contact began in February 1992; and probably the last conversation I had was about December 1992.

Mrs. THURMAN. It is my understanding you have worked for over 16 years in the child protective services?

Ms. SPARKS. That is correct.

Mrs. THURMAN. Were you concerned about the safety of the young girls after hearing some of these religious views?

Ms. SPARKS. Yes; very concerned. There was not just the sexual abuse, but there were other things going on. We knew that babies were being spanked, but we never saw a bruise so it was real difficult for us to do anything with that. But children were telling us things that we couldn't pursue because of our limited access.

Mrs. THURMAN. Did at any time, he also talk—because you had just mentioned earlier that they probably would never come out of there. Did he in his religious beliefs talk about that as well?

Ms. SPARKS. That was consistent. He said that the enemy would surround the camp, and he talked a lot about Babylon and the Government being the beast, and one of the things that they were supposed to do was to try to confuse the enemy. So even when he lied

to people he thought that was what he was supposed to do. But his plan was there would be blood and fire at the end and everyone would die. The saints would all die.

Mrs. THURMAN. When Kiri testified before you, she talked about cyanide and guns. So that kind of goes along with the same thing she had said, that they knew about suicide?

Ms. SPARKS. When I talked to David there was an incident where there were rumors of mass suicide. He was adamant that suicide was not in their plan. You have to understand that he thought that he was Christ and he was the gentle Messiah. He tried to tell us the truth, and we didn't listen. So he thought that he was here as a military intervention. So that was his position. He thought he was here to militarily intervene, and that colored a lot of the things that he did.

Mrs. THURMAN. Let's do his punishments a little bit here because I know there were some views I think that you wanted to share with us about his punishments and why he did them and why he thought there was the reason for that.

Ms. SPARKS. He had a very interesting philosophy on disciplining children, and he confirmed that that started at about 8 months old.

Mrs. THURMAN. He said that.

Ms. SPARKS. Yes. I said, how do you discipline a baby?

He said, you hold the baby and if it cries you say "no" and then you look away. You do that several times, and that is where you start.

I said, what if the child is going to be burned, stick its hand in the fire?

He said, well, you say "no," I told you don't do that, you will get hurt.

So I said, what if he tries again?

He said, if he tries again, you tell him the only thing. I only tell you the truth, and if you don't listen to me you will get hurt. He said, then next time you let him get burned, and he will remember.

I said, well, David, I hear what you are saying. What happens if a child runs in front of a car? You can't just let them do that.

He said, "no," but you can get a mutilated cat and show it to the child and say, "look, this is what will happen if you don't do what I say." So it was a threatening thing.

With Kiri Jewell, she was scared to death that she was telling me and he might find out. That was one of the reasons she wouldn't testify, because she knew he would be there.

Mrs. THURMAN. She also knew that her mother would be there?

Ms. SPARKS. Yes. She said that she sometimes wondered what it would be like if David was right, if his teachings were right, and she thought that she would die and burn in hell for telling. So he had a great hold on those children. It was very difficult to get them to talk because it was very monitored.

Mrs. THURMAN. And that happened to you as well when you were at the compound. When you went in initially to talk to the children, you found that same kind of—

Ms. SPARKS. Yes. We ended up interviewing the little boy on the back of a flatbed trailer outside, and his eyes were darting around, and he was clearly frightened. He was being very careful what he said.



When I met with David Koresh after that he knew every question I had asked the child. He must have sat the child down and interrogated him to get every single bit of information, because then he was explaining everything to me.

Mr. ZELIFF. Mrs. Thurman, your time is expired.

Mrs. THURMAN. Thank you.

Mr. ZELIFF. Ms. Ros-Lehtinen from Florida.

Ms. ROS-LEHTINEN. I yield to Mr. Souder.

Mr. SOUDER. I want to be clear that I hope no one watching this hearing or looking at the record believes that this man Koresh's perverted view of scripture somehow justifies child sexual abuse. He may have thought it was within his religious philosophy, but the Bible also says, "Even the Devil can misquote scripture".

With that, I would like to move to Mr. Evans.

My colleague introduced a set of memos that originate from the Department of Treasury and concern the tragic events around Waco. Would you tell me what you believe to be the significance of these documents?

#### STATEMENT OF TIM EVANS, ATTORNEY

Mr. EVANS. Yes. Thank you very much.

I first learned of these documents while I was here observing these hearings 2 days ago. I have to tell you that I was amazed that they existed and shocked at what I saw in them. I would like to go over these with you at this time, because I think it takes someone who is involved in the legal system to actually let you know what the importance of these documents is.

I was one of the lawyers in the Davidian case in San Antonio. I represented Norman Allison, a British citizen, who was acquitted of all charges, even though he was charged with the same conspiracy to murder Federal agents that everyone else was.

What is significant about these documents is that there is a theory in law and in our Constitution, and the Supreme Court endorses it firmly, that the Government must reveal to anyone that is accused of a crime in this country evidence that is exculpatory; in other words, that might point to their innocence or that might disagree—in other words, shows that there are two different sides to the story or that the Government witnesses are telling two different stories. That is clearly a burden.

These documents show—to my interpretation of looking at them, they show that there was an effort to keep that from happening and to just abandon that responsibility.

I would ask you, first, to set the stage. We must understand that not one agent who was at the raid on the scene on the 28th made a written report of it. That is highly irregular. We brought that out in the trial. The Texas Rangers testified that it was highly irregular.

I have practiced criminal law for 25 years. I have never been in a situation where agents who worked at a—who had personal information, who were at a site and observed an incident, certainly one this spectacular and egregious, did not make a written report.

We asked at the trial, why didn't you make a written report?

Well, we were just told not to, and there was going to be a review by the Texas Rangers, and we wanted this to look like an independent investigation.

They told us that. That was their reason.

Now we see these documents, which I have just seen today, that were not revealed to us, and I will tell you, this is something new that these hearings have brought out. I will guarantee you that.

The first one, a page that starts with a memo to Ronald K. Noble—I will not go through all of these, but I will go through the first one to set the stage for what is important. That memo from Sara Elizabeth Jones to Ronald K. Noble was written on March 1, 1993. That is the day after the shootings, when the ATF did what they always do and all law enforcement agencies do across the country, they started a shooting review team. That is what they should have done.

That document will say—if you could point to March 1—well, take that down because I believe we have a blowup of the paragraph that I am referring to. It says, on March 1, the ATF initiated a shooting review. David Troy and Bill Wood interviewed four agents, and they are named there. I won't read their names—two of them were supervisors.

Troy tells review they immediately determined that these stories did not add up.

If you will look in the parentheses where it says note. Here was the response to that note. Johnston, the assistant U.S. attorney, at this point advised Hartnett to stop the ATF shooting review because ATF was creating Brady material; not because they wanted the rangers to do an independent investigation but because ATF was creating Brady material. Brady material, ladies and gentlemen, is information that might tend to show that someone accused is innocent.

I see my red light is on.

Mr. ZELIFF. Do you believe that you have sufficiently answered the question? If you have 10 seconds to wrap it up—

Mr. EVANS. To be fair, there are several other documents, and I hope I get a chance to go through it and—no; I have not answered the question, but it will take more than a minute.

Mr. ZELIFF. Maybe the next gentleman will give you time. Mr. Schumer, you have 5 minutes.

Mr. SCHUMER. It might snow tomorrow, also. I am sure that folks on the other side will want to review your very lawyerlike presentation, Mr. Evans.

I have questions for Dr. Sparks. Dr. Sparks, I know that you didn't come to Washington to talk about the role of the National Rifle Association in setting up this hearing, but I must ask you about it because I think it is important that we get into the official record what happened in terms of your interview. So what I would like to do is first play this tape and have you identify it. This is the tape—

Mr. ZELIFF. Are you doing wiretapping now?

Mr. SCHUMER. No; we are not doing wiretapping, wiretaping or anything else. This is the tape that we have talked about before in terms of a phone message left for Ms. Sparks by a Ms. Fran Haga.

Mr. BARR. Mr. Chairman, parliamentary inquiry.

Mr. ZELIFF. Please state the inquiry.

Mr. BARR. Mr. Chairman, every time our side has attempted to do something even somewhat less spectacular than the gentleman from New York always tries, the other side objects to it on parliamentary grounds. There was a discussion earlier formed as a parliamentary inquiry that nothing could be distributed or used unless shown to the other sides; namely, them, in advance. So I would object to the introduction of this at this time, based on precedence that the other side has already set by way of parliamentary inquiry.

Mr. ZELIFF. Do you want to be in the Chair?

Mr. SCHUMER. No.

Mr. ZELIFF. I know you do.

Mr. SCHUMER. Two years.

Mr. ZELIFF. Mr. Barr, with all due respect and with a sense of fairness, I remember a CNN tape that we had in the beginning.

Mr. BARR. To which they objected.

Mr. ZELIFF. They did, and we spent a lot of time. But you are a man of much greater flexibility.

Mr. BARR. I think our side generally is, and I appreciate the other side now recognizing that. I remove my objection.

Mr. ZELIFF. Thank you very much.

Proceed, Mr. Schumer. The clock is ticking.

[Tape played.]

I am at 202-436-0000, extension 102, in Washington, DC. This is not exactly what you want to hear on your voice mail this morning, but I am with the Waco hearing team that is working on putting together the Waco hearings that were notified to begin the 12th of July, but it looks like they will be backed up to the 18th. I want to try to get in touch with you to chat with you about some of your direct knowledge of the things that came down at Waco. If you can get back to me, please do.

Mr. ZELIFF. Did you hire her?

Mr. SCHUMER. Unfortunately, the National Rifle Association did. Let's let Dr. Sparks answer the questions.

Was this message left on your voice mail, Doctor?

Ms. SPARKS. First, I need to clear something up. Don't call me doctor.

Mr. SCHUMER. I am sorry. It says doctor there.

Was this message left on your voice mail, Ms. Sparks?

Ms. SPARKS. It was.

Mr. SCHUMER. Did you return Fran Haga's call?

Ms. SPARKS. Yes, I did.

Mr. SCHUMER. When you called her back, how did she initially identify herself?

Ms. SPARKS. She said she was with the Waco team, and she wanted to talk to me about what I knew about Waco.

Mr. SCHUMER. How did you get her to admit she worked for the NRA?

Ms. SPARKS. As we talked, something just didn't seem right. And I asked her, what is your role? Tell me what your role in this is, because it seemed to be getting fuzzy to me. She sort of talked in circles, and finally I said, wait a minute. Who pays your salary? When pressed, she did tell me that it was the NRA.

Mr. SCHUMER. Did you feel deceived by Ms. Haga?

Ms. SPARKS. Yes.

Mr. SCHUMER. And would you have called her back if initially, when she first played the tape, she identified herself as being from the NRA?

Ms. SPARKS. No, I wouldn't have.

Mr. SCHUMER. Thank you, Ms. Sparks.

Mr. ZELIFF. What was the point?

Mr. SCHUMER. Well, let—

Mr. ZELIFF. Did I miss something?

Mr. SCHUMER. I don't think anybody in the audience missed it, Mr. Chairman.

Mr. ZELIFF. That is not a touché.

Mr. SCHUMER. No.

Mr. ZELIFF. Someone left a message—

Mr. SCHUMER. Ms. Fran Haga is a consultant for the National Rifle Association.

Mr. ZELIFF. Do we know that?

Mr. SCHUMER. Yes, we do. She admitted it to Ms. Sparks. But when she called Ms. Sparks to interview her, she said, I am from the Waco hearing team and did not tell Ms. Sparks who she was being paid by and where she was. The attempt, in my judgment—

Regular order please, Mr. Chairman. If you want to question—

Mr. ZELIFF. You are now on overtime anyway.

Mr. SCHUMER. I was interrupted and would ask to finish.

Mr. ZELIFF. I will give you another minute.

Mr. SCHUMER. So we will let the public decide.

I have one other point that I would like to make to you, Mr. Chairman, not related to this. I thank you, Dr. Sparks—Ms. Sparks; sorry.

And that is that you, Mr. Chairman, and I think Mr. Mica have complained Wednesday that Members haven't been able to see the illegal guns found in the Davidian compound, and I agree that we ought to see the guns. I want to let the committee know that I have asked the Justice Department to bring those guns to Washington. The Justice Department has agreed. The guns will be brought to Washington next week, and all the Members can see those guns for themselves.

With that, I yield back my time.

Mr. ZELIFF. One quick question. Does that mean that we now have approval to have those guns x rayed and a third-party opinion of whether they have been altered, when they were altered, before or after the fire?

Mr. SCHUMER. Let me tell you the history, if the gentleman would yield. The history was that you had sent a letter a month ago making that request. The Justice Department sent you back a letter saying they would try to comply with the request and then had no answer from you. When I saw Mr. Mica's letter this morning—

Mr. ZELIFF. Your time has expired.

Mr. SCHUMER. You are asking me a question. I will take another 20 seconds and get the story out.

When I saw Mr. Mica's letter this morning again saying why couldn't all the guns come up, I renewed a request to the Justice

Department. They told me, yes, they don't want anything to be private here, and I am making that——

Mr. ZELIFF. I think the comment came back that the State of Texas, that it would cost thousands of dollars, this came back from the Justice Department. That is why we were surprised to see those weapons here.

Mr. MICA. Mr. Chairman, parliamentary inquiry. If I were going to bring one of the Bradley tanks in here, what would be the procedure for—would we have to have the doors widened, submitting it as evidence?

Mr. CONYERS. No; just go through the doors.

Mr. MICA. Thank you.

Mr. ZELIFF. While the gentleman is not stating a legitimate parliamentary inquiry, I believe the gentleman from Michigan appropriately answered it.

Mr. Heineman, you have 5 minutes.

Mr. HEINEMAN. Thank you. I yield 30 seconds to the gentleman from Illinois, Mr. Hyde, and 4 minutes 30 seconds to the gentleman from Indiana, Mr. Souder.

Mr. HYDE. I thank the gentleman.

I think it is incumbent on Mr. Schumer and his side to explain to this committee in regular order how Ms. Sparks' testimony has been tainted by the deceit imposed upon her and us by the National Rifle Association. I concede that was deceitful and untrue, but how do you leap from that act of cupidity to taint? That is the core of your obstructionism during all these hearings, is that the NRA has tainted. I take Ms. Sparks testimony as free, as fair, as full and as untainted.

Do you feel tainted by the "NRA-lady?" Is your testimony in any way affected by it?

Ms. SPARKS. I said things to Ms. Haga that I probably would have been more careful how I put my language together.

Mr. HYDE. But you would say that to us, too, wouldn't you, the same things?

Ms. SPARKS. I didn't lie to her, but I am cautious about people who are not upfront with me because I don't know their agenda.

Mr. HYDE. You were deceived, but it hasn't affected your testimony here today?

Ms. SPARKS. It was her method that I was concerned with.

Mr. HYDE. Absolutely.

Ms. SPARKS. It has not affected my testimony.

Mr. HYDE. It has not affected your testimony?

Ms. SPARKS. No, sir.

Mr. SCHUMER. Would the gentleman yield?

Mr. HYDE. I suppose, but I don't have the time.

Mr. ZELIFF. It is Mr. Souder's time. He has a right to yield or he can use his own time.

Mr. SOUDER. I am going to use my own time.

We already have under oath that it didn't affect her testimony. This is typical delaying tactics. All we have heard this whole hearing is there is no new evidence. We get new evidence and the next thing we know there is a diversionary tactic.

I already said I was sorry for something we didn't do, we didn't have anything to do with. I am upset that we keep hearing about

it when it didn't affect the testimony. It wasn't any part of us. We are trying to go through what appears to be new evidence, what does appear to be an attempted coverup by the Federal Government, and we need to get into the questioning regarding what we are supposed to be doing with this committee.

Mr. Evans, could you tell us about the second shooting that occurred on February 28?

Mr. EVANS. Well, there was also a false affidavit in connection with that second shooting. I can elaborate on that. I have a copy of it. The reason I can say it is because they gave the affidavit on the one hand, and on the other hand an interview from one of the Texas Rangers of another ATF agent gave information showing that that affidavit just wasn't true.

That second report from the ATF agent Marvin Richardson, an honest agent, a good man, said when he examined my client's gun it did not appear to have been shot or fired. He smelled it. He looked at it. It hadn't been shot.

Another agent swore an affidavit that contributed to holding my client in jail without bond for a year and said that my client had shot at them, made the definitive statement that he shot, withholding the information that they had known for months before that was in this other report. They didn't give me that report until the eve of trial in violation of this very Brady doctrine we were talking about.

If I get a chance to get through the rest of those blowups over there, I can show 4 or 5 instances when they have said this—would you move that and go to the blowup—right there. That is somebody's handwritten notes saying Texas Ranger Ray Jahn does not want them, Chuck, Phil, that is the two supervisors, reinterviewed because Jahn does not want any more exculpatory statements generated. Exculpatory means it might tend to show that somebody facing life without parole might be innocent. It says right there in black and white.

They tried to explain this, to say, well, that just meant we didn't want a lot of additional reports generated or we don't want to compromise the prosecution. You don't want to compromise the prosecution by revealing evidence that might tend to show that somebody is not guilty of the charges? Well, that is not where we are in this country I hope.

Mr. SOUDER. Keep going.

Mr. ZELIFF. If you can come to a conclusion in 10 seconds, it would be great.

Mr. EVANS. There is one other document that is not blown up that I received in the documents that were introduced by Mr. Barr. It says this: Statements from agents, should they go to the U.S.A., U.S. attorney or us? Do they want us to create new—and then it stops and says, asking questions to which would require us to make new documents. And then in parentheses the word exculpatory. What are we talking about, making new documents, in parentheses, exculpatory?

Mr. ZELIFF. We are going to have to move. Thank you very much.

Mrs. Collins, you have 5 minutes.

Mrs. COLLINS of Illinois. I yield the same lengthy 30 seconds to Mr. Conyers that was yielded to Mr. Hyde.

Mr. CONYERS. Thank you, Mrs. Collins.

With reference to whether the evidence was tainted, it is the attempt to taint, not whether it was successful or not. This is a very strong woman before us here.

Mr. Chairman, for your information, if you didn't get the point, 18 U.S.C. 1512, it prohibits the use of misleading conduct to influence witnesses before an official hearing, including before a hearing of Congress. That carries a criminal penalty.

I thank the gentlelady from Illinois for yielding to me.

Mrs. COLLINS of Illinois. Reclaiming my time, Ms. Sparks, I understand that Dr. Perry, who later interviewed the surviving children, testified that the adults in Mount Carmel compound had apparently instilled in the children a strong reluctance to tell outsiders of any physical or sexual abuse. Is that consistent with your contact with the children before the trial?

Ms. SPARKS. That is correct. David worked real hard to keep the children away from any outside contact. They were not even in public school.

Mrs. COLLINS of Illinois. Did you hear of any accounts of young children locked up as punishment and placed where there were rats?

Ms. SPARKS. That was a part of one of our initial allegations, and I did talk with a child about that. He was very good at being evasive. He was real uncomfortable with the question. And, finally, as we talked he said, well, you know there was one time, but it was a long time ago.

Later in talking to others, I asked Steve Schneider, an adult at the compound, about that incident, and he did remember something like that. And there was some statement to Cyrus about do you want to sleep in the garage and there are rats there. But he said it was nothing. So he did not admit that the child was actually put there. But the child was very nervous about the question.

Mrs. COLLINS of Illinois. At the time that the agency file on David Koresh was closed did you have the information you later had from Kiri Jewell?

Ms. SPARKS. I had had some contact with Kiri Jewell. At that time she was not willing to really talk about it. It was not until just prior to the raid that she had decided she wanted to testify, and that is when I did the interview with her.

Mrs. COLLINS of Illinois. Would you be able to say why it was at that particular time that she decided that she wanted to testify?

Ms. SPARKS. I really was not involved with that. The ATF agents came to me with a sexual abuse referral, and that is when I got involved with it.

Mrs. COLLINS of Illinois. Do you feel that Koresh's followers can accurately say that he was fully investigated and found innocent?

Ms. SPARKS. Not at all.

Mrs. COLLINS of Illinois. During your visit you had several opportunities to talk to children. Did you have any opportunities to talk to adults besides the children?

Ms. SPARKS. Yes, I did.

Mrs. COLLINS of Illinois. What was your general feeling after talking with these adults?

Ms. SPARKS. That they truly adored him. He was very much in charge. Sometimes they seemed to set up the conversations we had, but you could tell that they were basically doing what he had said.

Mrs. COLLINS of Illinois. You mentioned something about the 45th Psalm?

Ms. SPARKS. Yes.

Mrs. COLLINS of Illinois. What impact did that have on his religious teaching?

Ms. SPARKS. That was basically the introduction. It was the wedding psalm. When we were talking about studying and he wanted to teach me the seven seals, that was an important passage to him.

Mrs. COLLINS of Illinois. If I may paraphrase, it says, my heart is overflowing with a good theme. I recite my composition concerning the King. My tongue is the center of the mighty rider. You are fairer than the sons of men. Grace is poured upon your lips. Therefore, God has blessed you forever, et cetera—those kinds of things are what he sort of used as religious doctrine?

Ms. SPARKS. Yes. Then he told me you must learn by tasting.

Mrs. COLLINS of Illinois. By tasting.

Ms. SPARKS. Yes.

Mr. ZELIFF. That is a good spot, I think, to take a break. Your time has expired. We are going to recess for 20 minutes, and we will adjourn here at 10 of. And we thank you for your patience. We will reconvene in 20 minutes.

[Recess.]

Mr. ZELIFF. The subcommittees will now come to order.

I would just like to say that I want to congratulate our colleague from Oklahoma, Bill Brewster, for his honesty and integrity relative to the release that just went out through AP. I think what is important and I think he and I and all of us here need to get to the bottom of what the business is that we are here for. The bottom is that we need—

Mr. CONYERS. Mr. Chairman.

Mr. ZELIFF. Let me just finish.

We need to find the truth and we need to get away from any outside influences that could affect that, so I just want to compliment you just as I did Louis Freeh last week when he took the courageous move of reopening Ruby Ridge. I think that was also courageous.

Mr. CONYERS. Could I get my time now?

Mr. ZELIFF. Well, actually Mr. Barr has the time.

Mr. BARR. OK, thank you, Mr. Chairman.

Mr. Evans, how many years have you been practicing law?

Mr. EVANS. A little over 25.

Mr. BARR. Has that been specializing in criminal law?

Mr. EVANS. That is all I have done for that time.

Mr. BARR. Both Federal and State?

Mr. EVANS. Yes.

Mr. BARR. Are you familiar with bail procedures and the Bail Reform Act in Federal courts?

Mr. EVANS. Yes, I am.

Mr. BARR. Are you familiar with testimony here today regarding David Koresh leaving the compound and the reasons why he was not apprehended or why no effort was made to apprehend him



away from the compound and references to him getting right back out on bond?

Mr. EVANS. Yes, I have heard a lot of that.

Mr. BARR. Does that comport with your understanding of the Bail Reform Act?

Mr. EVANS. Absolutely not. It is very misleading because the Bail Reform Act says you can detain persons without bond for a variety of reasons, but one of them is if they might be a danger to the community, and the Government gets to file a notice of that and then they get 3 days to prepare for a hearing, so anybody that gets arrested in the Federal system is looking at 3 days in jail without—

Mr. BARR. Is there any doubt at all in your mind that Mr. Koresh, had he been arrested away from the compound, would have been detained by a Federal magistrate?

Mr. EVANS. Well, the greatest proof of that is every person that was on trial had been detained for a year before they went to trial, so if these people, these other people were detained, surely David Koresh would have been.

Mr. BARR. OK.

At this time I am going to go down to your charts here. We have heard a great deal about taint, and I want to show the American public some taint. We have documents here. This first one talks about a directive from the Government of the United States of America, directing that no interviews and no discussions with any participants who might be potential witnesses are to be conducted, hoping that the passage of time will dim memories. That is taint.

Our Department of Justice of the United States of America is directing that the Treasury Department of the United States of America not conduct interviews to get at the truth. You want taint? That is taint.

Our Government, in response to the ATF carrying out a legitimate in due course investigation of what went wrong on February 28, is being told by the assistant U.S. attorney of the U.S. Department of Justice to stop the ATF shooting review, which we have heard by experts is designed to get at the truth to find out what went wrong and why. They are being told to stop the interviews, and those that must go forward go forward without notes being created. You want taint? That is taint.

When the Government conducted, began conducting before the coverup its shooting review, it was immediately determined that the stories did not add up, and then the interviews were told, the interviewees were told by the Department of Justice representative don't go further. You want taint? That is taint.

What I would like to do at this point, Mr. Evans, is go back to you and give us your expert opinion as to whether or not this represents standard operating procedures for the Department of Justice and the Department of Treasury in conducting investigations of potential wrongdoing.

Mr. EVANS. Well, if it does we are all in a lot of big, big trouble because people that are on trial, and there might be something to show that they are really innocent, that evidence would never come out because we would never know about it.

Mr. BARR. Have you ever in your 25 years of handling cases, including many involving criminal cases, involving the U.S. Department of Justice in Federal court seen documents as explicit as these in directing that interviews not be conducted because they may turn up evidence of innocence?

Mr. EVANS. Never have I seen documents that explicit.

Mr. BARR. Do you ever hope to see such a thing again?

Mr. EVANS. Only if it happens again because if we couldn't find it out, we would never know, and the trouble is we didn't ever—we, the defense lawyers, never got those documents.

Mr. BARR. But you did through this hearing?

Mr. EVANS. Through this hearing, and I saw them for the first time sitting on the front row here 2 days ago. I didn't come up here to talk about those documents. I just saw them after I got here.

Mr. BARR. Thank you.

Mr. ZELIFF. The Chair yields to Mr. Conyers for 5 minutes.

Mr. CONYERS. Thank you very much.

Counsel Evans, did you examine the search warrant in this matter?

Mr. EVANS. Yes, I did.

Mr. CONYERS. Did you challenge its validity?

Mr. EVANS. No, I did not.

Mr. CONYERS. Did you think that it was valid?

Mr. EVANS. Two reasons I didn't—

Mr. CONYERS. Wait a minute. The question is did you think that it was valid.

Mr. EVANS. I thought it was probably legally sufficient, and so, yes; I will spot you probable cause.

Mr. CONYERS. OK, that is fine. Thank you very much.

Mr. EVANS. Is that the same thing as good enough for Government work?

Mr. CONYERS. I don't need any more comments, Counsel. I am going to someone else.

Mr. Kolman, you have military background in addition to your current position?

#### **STATEMENT OF JOHN A. KOLMAN, FORMER CAPTAIN, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT**

Mr. KOLMAN. I have some, sir, but predominantly my experience has been within civilian law enforcement, tactical operations.

Mr. CONYERS. Do you have a familiarity in conducting the review to be able to comment about the CS gas and its use in this incident?

Mr. KOLMAN. Well, of course our charter was not to look at anything that took place subsequent to the release of responsibility of the FBI, so I can't comment with any personal knowledge in terms of what they did or why they used CS. I do have an opinion based upon my experience, however, concerning CS.

Mr. CONYERS. We are going to go into detail about it in another panel, but what is your general familiarity with it? What is the circumstance in which it can be used?

Mr. KOLMAN. Generally speaking, CS tearing agent, because gas is a misnomer, it is not a gas, it is a particulate matter, is utilized

in either crowd and riot control situations or in situations involving barricaded criminal suspects.

Mr. CONYERS. Do you know anything about its health hazards or potential health hazards?

Mr. KOLMAN. I have utilized CS myself. I have seen it used in literally hundreds of cases, both in crowd and riot control situations as well as barricade situations. I have never, ever seen in all of that experience, anyone suffer any health hazards or become injured as a result of it.

I am acquainted with the British study that has held over the years of looking and researching into the use of CS that people who have previous healthy conditions will suffer no harm from the use of CS. People that were previously in bad health could perhaps have an episode just as it would be prompted, for example, if a person had seizure disorders, pressure might cause them to have a seizure, and the use of CS because of that additional pressure could, of course, cause them to perhaps have an episode.

Mr. CONYERS. Thank you, Mr. Kolman.

With reference to the use of flash bangs, the noise devices, do you have any experience that would lead you to believe it may not be dangerous?

Mr. KOLMAN. I am sorry, sir?

Mr. CONYERS. Do you think flash bangs are dangerous to children or not?

Mr. KOLMAN. It depends upon how they are utilized. If they are utilized properly, they are in fact a proven life saving device. They are designed to be utilized to distract a criminal suspect or someone that perhaps is mentally deranged so that a few extra seconds can be gained so that the entry team or the police officers or Federal agents can hopefully take that person into custody before they arm themselves or before they utilize those items of weaponry against law enforcement. In effect, what you are doing is preventing a shooting and making it safer for those involved for both sides.

Mr. CONYERS. Finally, isn't dynamic entry, doesn't that contain the element of surprise as an important factor?

Mr. KOLMAN. Absolutely.

Mr. CONYERS. As a matter of fact, it would be hard for me to imagine a dynamic entry without an element of surprise. I guess maybe you could do it without it, but it seems to me that would normally accompany the circumstances around using dynamic entry.

Mr. KOLMAN. That is correct, sir, and I think there has been a lot of misunderstanding about the term "dynamic entry," and I know some confusion about what it consists of. Dynamic entry is nothing more than a vigorous, sudden, unexpected entry, and the term "unexpected entry," of course, implies the element of surprise. It is very essential.

Mr. ZELIFF. The gentleman's time has expired.

Mr. CONYERS. Thank you very much, Mr. Kolman, and thank you, Mr. Chairman.

Mr. ZELIFF. Thank you.

[The prepared statement of Mr. Kolman follows:]

PREPARED STATEMENT OF JOHN A. KOLMAN, FORMER CAPTAIN, LOS ANGELES  
COUNTY SHERIFF'S DEPARTMENT

My name is John A. Kolman, and I am a retired Captain from the Los Angeles County Sheriff's Department, having retired in 1987 with over twenty-six years of law enforcement experience (almost nine with the Department's tactical unit/ SWAT). As a member of the Tactical Expert Advisory Panel for the U.S. Department of the Treasury, I reviewed numerous documents, interviews, videotapes and other information related to the attempted service of search and arrest warrants at the Branch Davidian Compound outside of Waco, Texas, by agents of the Bureau of Alcohol, Tobacco and Firearms (B.A.T.F.) on February 28, 1993. The results of my independent review are included as one of the appendices to the main Treasury Report. Although I identified and discussed a number of deficiencies, predominantly associated with management, I concluded that had the operation not been compromised, unwittingly or otherwise, by the media, there was a reasonable expectation that it would have succeeded.

Throughout the media coverage of the incident, both printed and electronic, I have been increasingly concerned over the continued inflammatory nature of the information made available to the public.

Because the stated purpose of the Joint House Subcommittee Hearings on Waco is to arrive at the truth, I would like to address a few of the areas which, in my opinion, are being used to mislead the public.

#### UNIFORMS AND EQUIPMENT

The men and women of the B.A.T.F. have been falsely described by some as "Jack-booted, ski-masked, helmeted thugs", and their appearance and equipment reminiscent of a conquering army.

The uniforms and equipment carried and utilized by the B.A.T.F. Special Response Teams are similar, in some cases identical, to that utilized by civilian law enforcement SWAT teams throughout the United States. Unfortunately for the agents at Waco, their equipment was not on a par with many contemporary SWAT teams; i.e., no fully automatic weapons or chemical agents and limited use of flash/sound diversionary devices. They have even been criticized for wearing protective ballistic helmets, and while they do not wear protective balaclavas, called ski masks by critics, as they should, they were accused of so doing. Everything worn and used by contemporary SWAT teams, including B.A.T.F. Special Response Teams, have necessary, functional purposes. Brevity does not enable me to discuss them in this statement.

#### RIGHT OF SELF-DEFENSE

Many have suggested, indeed insisted, that David Koresh and his followers had a right to defend themselves against the aggression of B.A.T.F. agents. Agents were acting upon the authority of legally sufficient warrants signed by a magistrate. Having had at least forty-five minutes advanced notice of the planned service, David Koresh used this time not to prompt his followers to surrender or submit to the search, but rather to arm selected members, prepare and ultimately initiate a deadly ambush of arriving B.A.T.F. agents. No reasonable person would believe this was an act of self-defense.

#### DYNAMIC WARRANT SERVICE

Much criticism has been directed at B.A.T.F. planners for selecting the dynamic entry option to serve warrants against the Branch Davidians. Alternative options were explored by planners; i.e., arresting Koresh off the Compound, and containing the Compound (ordering Koresh to surrender and submit to a search). The latter option was abandoned as a result of valid intelligence reflecting the threat of mass suicide and the self-sustaining capabilities of the Branch Davidians (water and three-months food supply).

The first option, arresting Koresh off the Compound, was recognized as viable. However, because of faulty and unconfirmed intelligence, it was also abandoned.

Based upon available information, planners logically selected the dynamic option, which they understood necessitated surprise, speed and diversion. All of these elements were included in their plan. Unfortunately, the compromise of the operation and the flawed decision of commanders to proceed in spite of compromise, led B.A.T.F. agents into David Koresh's planned ambush.

Other issues of significance are discussed extensively within my independent report. However, space limitations preclude addressing them here.

As already mentioned, like other members of the panel, I believe all noted deficiencies were identified and related within the main Treasury Report (including independent reports of reviewers).

To their credit, the Department of the Treasury accepted the report as an extensive, objective review of the B.A.T.F.'s involvement. Those individuals identified with justification as culpable were sternly disciplined, including forced retirements, demotion and termination, and the new administration of the B.A.T.F. accepted and implemented many of the recommendations included in the report. Others are planned for future implementation. In so doing, both entities ensured that the loss of four agents and the wounding of twenty others would not have been in vain.

I have had the opportunity to work with agents of the B.A.T.F. throughout my career, and have found them to be dedicated professionals who do a difficult and unpopular job very well. Like all law enforcement officers, B.A.T.F. agents are sworn to enforce the laws of our country—laws enacted by Congress. That is what they were doing on February 28, 1993, and continue to do to this day.

The seemingly unending attacks upon the Bureau of Alcohol, Tobacco and Firearms have seriously affected the morale of the dedicated men and women of the entire Bureau, and I am concerned may result in a reluctance or hesitance to take action they know to be necessary, perhaps jeopardizing their own safety and potentially allowing further proliferation of groups intent upon stockpiling illegal weapons.

In my opinion, an objective review of the investigative work of the Waco Review Staff and the Tactical Expert Advisory Panel, and well as the resulting actions taken by both the Department of the Treasury and the B.A.T.F., will reflect the need for no further action on the part of Congress.

Thank you for providing the opportunity for me to enter this statement into the record.

Mr. ZELIFF. Mr. Buyer from Indiana for 5 minutes.

Mr. BUYER. Thank you, Mr. Chairman. Before I—actually I just want to make a few comments.

One thing I guess I will share. Yesterday in the morning I shared with some of my colleagues here about my experiences growing up on the Tippecanoe River and what that meant and what a shallow river is and what a deep river is.

I guess I have—I still am young when it comes to this town, young in that having been in this town for now 2½ years I still have a bit of naivete, naivete in that I think Congress can conduct its oversight responsibilities, that we can begin to really look into things, that there really are separations of power, that there are legitimate roles and duties for us to undertake, and that we can do that free of any forms of taint, and I have heard Mr. Schumer, Mr. Conyers, and others talk about this cloud over the proceedings and whether they are tainted in any way. They reached so far as some form of, some independent counsel out there that may have been paid by the NRA. But to me it is extremely disappointing on the AP article that was mentioned.

But one thing I have to kind of joke about is that, you know, there is the Federal statute that was read earlier about tampering with a witness or forms of intimidation, and for the Treasury Secretary who is now in charge of the ATF to in fact call a member of his own party informs to, hey, let's not try to embarrass the administration or Federal agencies.

The problem here is I don't think anybody could ever intimidate Mr. Brewster. You are quite a gentleman, and I just think that it is disappointing the administration would do that. I think that hopefully Mr. Rubin will clear the air somewhat on what in fact had occurred because if there was a cloud that, in fact, would be one.

I would like to yield to Mr. Henry Hyde the remaining balance of my time.

Mr. HYDE. Well, I thank you, and it just seems to me that to some people this is a PR exercise, rather than a serious inquiry into the truth, and maybe we can put aside all of these diversions and proceed to find out what the facts are.

Ms. SPARKS, I listened to you talk about your understanding of the Branch Davidians' theology, and you have studied it, I take it?

Ms. SPARKS. Yes.

Mr. HYDE. Did anybody ask you for your opinions during this siege of 51 days as to what David Koresh was all about and what their attitudes were towards coming out as we played records of rabbits being slain and rock music and whatever else? Did anyone ask you for your assistance on the theology that was driving these people?

Ms. SPARKS. No, sir. I gave information as I could, sometimes that was kind of difficult. Everybody had their own task, and it was real hard to disseminate information. I had the number for the negotiators, and there were a couple of times when I felt like there was something significant, but it was pretty frustrating.

Mr. HYDE. It is factual that the negotiators and those people in charge of this event totally misunderstood the theological basis for what the Davidians were doing: Resisting the Babylonians who were going to kill them, they were going to die and they couldn't go to Jerusalem until they did die, but they had to fight like it was an Armageddon to get the hosts of God down, and all of that would have been terribly important in understanding how to avoid the immolation that occurred with 86 people; isn't that true?

Ms. SPARKS. That is true.

Mr. HYDE. You couldn't get through to anybody, could you?

Ms. SPARKS. Well, I thought at one point I got through. My husband didn't understand it, either, and as I used the scriptures that David had given me over the months, we started trying to put together something, and an FBI agent asked for that document, and I provided it. It is pretty clear about what I thought was going to happen.

Mr. HYDE. We just went at it exactly wrong. To get them out, you don't hurl gas in and try to drive them out with noise. You talk to them on the basis of the scriptures; isn't that correct?

Ms. SPARKS. That is correct. What happened to them meant it was fulfillment of the prophecy.

Mr. HYDE. Sure.

When the 70, SWAT team of 70 with their helmets on and their guns, I mean, this was it, this was a fulfillment of the scriptures, but they had to fight back, and nobody understood that; did they?

Ms. SPARKS. Well, you have to understand that they were looking forward to that.

Mr. HYDE. No, you are talking about the Davidians.

Ms. SPARKS. Yes.

Mr. HYDE. I am talking about on our side, the servers of the warrants, and the search warrant. Nobody understood really what was driving these people.

Ms. SPARKS. I tried to communicate it, and I thought I was heard. I think part of that information got passed on. I was really angry after the raid, and I told them——

Mr. HYDE. Because it was avoidable?

Ms. SPARKS. Yes.

Mr. HYDE. Had somebody really known what they were doing, right?

Ms. SPARKS. The result was very predictable.

Mr. HYDE. I thank the gentlelady.

Mr. ZELIFF. The Chair yields to Mr. Scott 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Evans, back to the search warrant, I believe based on my reading of the affidavit that there was plenty there to support probable cause for the arrest and search. If you could show that the search was—that the warrant was defective and the search was illegal but done with good faith by the police, was executed in good faith by the police officers, what constructive purpose would have been served by a motion to suppress?

Mr. EVANS. It wouldn't have helped us under the current state of the law because all the police officers had to say was, I didn't know that warrant was bad, I thought it was good, the judge signed it. Once they say that, then anybody is going to find good faith and the issue is over.

Mr. SCOTT. So even if it were an illegal warrant, there would be no constructive purpose to be served to go forward with the motion to suppress?

Mr. EVANS. No, sir, not in the current status of the law. Now, you might do it to hope that some day the Supreme Court would help you on that issue.

Mr. SCOTT. Before the *Leon* decision, you could have made a motion to suppress; is that right?

Mr. EVANS. Oh, yeah, and did frequently.

Mr. SCOTT. I yield the balance of my time to the gentlelady from Illinois.

Mrs. COLLINS of Illinois. I thank the gentleman for yielding.

Ms. Sparks, I didn't get a chance to finish asking the questions that I wanted to ask you about the theology that the Davidians had, and one of the things that we were talking about was Psalm 45. I am going to read to you some of the verses of Psalm 45, the new King James version.

It says, you love righteousness and hate wickedness, therefore God, your God, has anointed you with the oil of gladness more than your companions. Listen, oh daughters, consider and incline your ear. Forget your own people also and your father's house. So the King will greatly desire your beauty because He is your Lord, worship Him. The royal door is all glorious within the palace, for clothing is woven with gold. He shall be brought to the King in robes of many colors. The virgins, her companions who follow her, shall be brought to you with gladness and rejoice and they shall be brought.

Now, what exactly did he take from those passages that you thought would encourage him to do the things he did to young children and to young girls?

Ms. SPARKS. Well, you have to remember that he was a very intelligent man. He didn't give you direct statements about the fact that he was sleeping with young girls. What he did was read those passages and then make comments about being the Lamb and that this is the scripture, so he never actually said it, he just used the scriptures to tell you what was right and what he thought the law was.

Mrs. COLLINS of Illinois. And people believe that because he read the scripture that it was all right for him to abuse young women, young girls?

Ms. SPARKS. Yes, ma'am. The men actually gave up their own wives to him. They believed it very strongly.

Mrs. COLLINS of Illinois. And is that because he was such an overpowering personality that they did that?

Ms. SPARKS. He was a very personable man, but when he was intense he was frightening. He would get real intense looking at you, and his voice would raise in kind of a threatening manner, and he was just very—he felt threatening.

Mrs. COLLINS of Illinois. And so he felt that the glories of the Messiah and his bride, they were all his glories. And all the brides were his; is that it?

Ms. SPARKS. That is correct.

Mrs. COLLINS of Illinois. And all the virgins were also his?

Ms. SPARKS. That is right. All the women belonged to him.

Mrs. COLLINS of Illinois. And therefore that made everything all right in his kingdom on Mount Carmel?

Ms. SPARKS. Remember, he thought he was the law, so he didn't have to answer to anyone because he was the law, and so anything he did—I mean, he wrote the book, he was the Lamb of God, so his interpretation was beyond question for him.

Mrs. COLLINS of Illinois. I yield back to the gentleman. Thank you. It is your time.

Mr. SCOTT. Thank you.

I would like to ask Mr. Oboyski a question. Secretary Bentsen went to great length to say what they had done after the fact to cure the problems that had happened. I was wondering if you could tell us what kinds of things we could look at in advance to measure whether or not we are properly prepared for these kinds of raids. I understand that this was somewhat unprecedented in the ATF, and they were not prepared for the raid, and they have subsequently upgraded their training and whatnot. What kinds of things should we look to to make sure that we don't get into this same kind of situation again?

#### **STATEMENT OF VICTOR OBOYSKI, PRESIDENT, LAW ENFORCEMENT OFFICERS ASSOCIATION**

Mr. OBOYSKI. Well, very briefly, what you have to look at is the intelligence gathering, you have to look at the type of training. You also have to look at the type of weapons that we are facing today.

I heard somebody talk about Darth Vader helmets, and I heard—we have been called "jackbooted" and we wear Nazi helmets. Those helmets protect us. We want to go home at night, and we are facing assault weapons, we have to wear those helmets.



So people have—we have to realize that law enforcement, the face of law enforcement has changed. We may not like the way they look but that is the way we look because we want to survive the end of the day, so we have to look at equipment. We have to look at intelligence. We have to look at who is stockpiling weapons for what purpose. Are there other cults out there? Are there other groups out there? And are we prepared to face another standoff? Do we have the behavioral science people, do we have the people we can call upon to say what is wrong with those people in there? How come they are not listening to us, what is going on, what do you think is in their mind? But most importantly we have to protect the public, and that is where we stand. We stand between the Koreshes of the world and everybody here; we stand there, law enforcement.

Mr. ZELIFF. The gentleman's time has expired. Mr. Ehrlich, 5 minutes.

Mr. EHRLICH. Mr. Chairman, I will be pleased to yield my 5 minutes to my friend and colleague, Mr. Bryant.

Mr. BRYANT of Tennessee. Thank you.

Ms. Sparks, I want to ask you just a few questions, if I might begin with you. You work for the State of Texas.

Ms. SPARKS. Yes, sir.

Mr. BRYANT of Tennessee. As I understand, you were out in the Mount Carmel compound two or three times.

Ms. SPARKS. Three times.

Mr. BRYANT of Tennessee. Were you allowed inside?

Ms. SPARKS. Yes.

Mr. BRYANT of Tennessee. Were you allowed to question people, both adults and children?

Ms. SPARKS. We had somewhat limited access, but we were allowed to question some.

Mr. BRYANT of Tennessee. Did you have any problem going in there?

Ms. SPARKS. No, we didn't. We were invited in.

Mr. BRYANT of Tennessee. When the agent, Aguilera, proposed to you the idea of perhaps assisting them in luring him outside, I understand that you offered to do that.

Ms. SPARKS. Yes, I did.

Mr. BRYANT of Tennessee. Initially, but as it went up your chain of command, your supervisor decided that you would not do that.

Ms. SPARKS. That is correct.

Mr. BRYANT of Tennessee. Would your decision to cooperate in trying to get Mr. Koresh outside the compound for the purposes of these agents arresting him, would that have been colored by the fact that you were familiar with his charismatic effect over the people there and perhaps if he were separated that it would be easier to take both sides down, so to speak?

Ms. SPARKS. Yes. I had a pretty good working relationship with David Koresh. We discussed scriptures, and he was very open to meeting with me.

Mr. BRYANT of Tennessee. But it was your feeling that once again separated from their leader that—it was your feeling that the people in the compound that were left back there were less likely to resist?

Ms. SPARKS. That is right, because they had to all be together for the prophecy to be fulfilled.

Mr. BRYANT of Tennessee. Now, there have been a number of allegations. We have had graphic testimony from a young lady who came in here and in my view was exploited publicly. Back in my home State, we don't even print the names of minors in that type of situation, and to go on public television and say what she did I think was some type of exploitation, but were there any State charges? Were these advancing? This type of charge was not a Federal offense, you know that.

Ms. SPARKS. Yes.

Mr. BRYANT of Tennessee. Were there efforts being made to process or prosecute these folks and Mr. Koresh in particular within the State of Texas?

Ms. SPARKS. I interviewed the child. She was afraid of David Koresh and didn't—she was afraid to testify, so they didn't move forward on it.

Mr. BRYANT of Tennessee. What about the other children, though?

Ms. SPARKS. We didn't have enough information. We didn't get a good investigation because we had limited access.

Mr. BRYANT of Tennessee. As I understand, now let me skip forward just a little bit because my time is getting short, the CS gas has been mentioned, and based on what you know of CS gas, would you have recommended that they put this inside that compound with those children and the elderly people there?

Ms. SPARKS. I don't know very much about CS gas at all. I had one conversation with an agent about it, and asked some questions about it, and what he told me is basically all I know. My concern was that I knew when I was there there were propane tanks in the hallway, and I wondered if that was going to present a problem.

Mr. BRYANT of Tennessee. Did you pass along this information?

Ms. SPARKS. I had a discussion about what would it do and how would it effect them, yes.

Mr. BRYANT of Tennessee. Were you asked by the FBI to set up a contingency plan for CS gas on children, to have showers and treatment set up for them?

Ms. SPARKS. Yes. That was a week or more prior to the actual fire.

Mr. BRYANT of Tennessee. To be clear, that was the second and final raid back in April, not this first entry in February, but back in April?

Ms. SPARKS. Yes.

Mr. BRYANT of Tennessee. Did they follow up with you and did you in fact do this?

Ms. SPARKS. We discussed all the tactics that we would use. I was supposed to meet with the medical team that evening. About 5:30, I got a call and they said forget it, forget all about it, don't even think about it.

Mr. BRYANT of Tennessee. Who is they? Who told you this?

Ms. SPARKS. It was an ATF agent who called from the command post.

Mr. BRYANT of Tennessee. This is in April prior to the second dynamic entry?

Ms. SPARKS. Actually, I think it was more like the end of March. I couldn't find my notes.

Mr. BRYANT of Tennessee. Mr. Chairman, I have other questions, but they are for other witnesses. Do you want to continue at this point?

Mr. ZELIFF. No. I believe your time has expired, and we will move on to recognize the lady from Texas, Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I know the bells have rung. I am not sure whether I will be able to finish.

Mr. ZELIFF. You will get your 5 minutes in.

Ms. JACKSON LEE. Let me ask Ms. Sparks, if I could, simply to pursue a line of questioning that deals with children, and I know there have been several questions about the women, but was it your sense that even the children in their young minds might have been—let me use the term “mezmerized,” if you have a better term, by the words or teachings of this individual, Mr. Koresh?

Ms. SPARKS. Yes, they were, they were very clear in their belief that he was the Lamb. As a matter of fact, the girl that you have heard from already, when I interviewed her she said—I said, how did you feel when this was going on, and she said, well, I felt scared, but I also felt privileged.

Ms. JACKSON LEE. So if we are in these hearings to provide corrective measures to ensure that this tragedy does not happen again, and we heard a fairly extensive list by my colleague, Mr. Lantos, about various sects, whether it be in Japan or elsewhere, they do exist, and so this is an important component for law enforcement maybe to understand, because as I hear you speaking, have heard your testimony, it seems that these were even young children that seemed to have been under this, I will just say, spell. Is that accurate, even the young children?

Ms. SPARKS. The young children were real clear that David was in charge.

Ms. JACKSON LEE. And did you see any progression as they got older, maybe 10, 11, 12, 15, the teenagers?

Ms. SPARKS. I think the older children were a little bit more well-versed in how to talk to us when we came. They knew how to confuse the enemy, as David would say, so they were more cautious in their words.

Ms. JACKSON LEE. As a solution, then, what would you offer for advanced training or additional training for law enforcement dealing with these exceptional type groups?

Ms. SPARKS. Well, I guess training for law enforcement wouldn't be my first choice. It would be to say there needs to be a collaboration of different people who have expertise in whatever sector you are looking at.

Ms. JACKSON LEE. So if we would offer, excuse me for interrupting you, but if we were to offer a corrective measure, you would emphasize collaboration and knowledge and that at least they would participate with any who had the expertise, real expertise about these very different circumstances; is that my understanding?

Ms. SPARKS. Yes. When you know that you have information that is helpful and you can't get it to the person who needs it, it is very frustrating.

Ms. JACKSON LEE. I thank you for that.

Mr. Oboyski, do I have that correct, sir, I hope?

Mr. OBOYSKI. Yes, you do.

Ms. JACKSON LEE. Thank you very much.

We have over the last couple of weeks been listening to a great deal of discussion on talk radio, I hold in the highest level of respect, it communicates to Americans, but we have heard one of the gentlemen, and maybe this has been said, but I want to emphasize it even more, G. Gordon Liddy talked about this whole idea of shooting in the head, but I want to get to the point of the kinds of equipment that has to be worn and I know that you have answered it in a manner that explains some of the type of equipment. I have heard ninja type suits being used, but more importantly, are we in a different era because we have the privileges of the first amendment in this Nation? It seems that people have taken a different tone. Does that not even require more safety and equipment that protects individuals who I would hope have the first responsibility of saving lives themselves and protecting themselves?

Mr. OBOYSKI. Yes, ma'am, without a doubt. The day of a couple of agents or a couple of detectives walking up to somebody's front door and knocking on a door in three piece suits to execute a warrant of any kind is over, not with the proliferation of firearms we have today, not with the type of weapons we find all over this country, urban and suburban America, assault rifles, converted to automatic machine guns, .9 mm. handguns with banana clips, we are really at danger out there.

Mr. Liddy's remarks do not help any, encouraging people to shoot ATF agents in the head because they are wearing bulletproof vests. Obviously, we have to go out there with helmets on. We have to wear this type of gear because of the type of people that we are dealing with. We are not dealing with people carrying Saturday-night specials. We also have to wear protective goggles because a lot of times we go in, we have things thrown in our face. We have a very aggressive criminal element out there.

Ms. JACKSON LEE. I thank you very much, Mr. Oboyski.

Mr. Chairman, I thank you, and I think even at Waco some were shot in the head, as I understand, ATF officers. I think I understood that.

Mr. ZELIFF. The gentlelady's time has expired.

Ms. JACKSON LEE. Thank you.

Mr. ZELIFF. Before we recess, I am going to yield to Mr. Mica for 1 second.

Mr. MICA. Mr. Chairman, thank you. I would like to yield my time to you when you return.

Mr. ZELIFF. Thank you very much.

What we will be doing, this is the last time we will be interrupted. We have, I believe, two votes. We will go and vote and we will return here 5 minutes after the second vote, and we will be here for the rest of the evening without interruption for those that—

Mr. SCOTT. We will probably have more than two votes, some amendments and then final passage.

Mr. ZELIFF. So whatever the amount of votes is, we will be back 5 minutes after the last one and resume. Thank you very much. Stand in recess.

[Recess.]

Mr. ZELIFF. The subcommittees will now come to order. The Chair yields to Mr. Bryant.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman. We would resume after voting here. I am not sure we have a—can we wait to start my time until we get a complete panel? I have questions for Mr. Morrison. Well, it is as complete as I need right now. We can go ahead and start.

Mr. Morrison, let me follow up with some questions. I know you testified before this panel yesterday.

**STATEMENT OF GEORGE MORRISON, FORMER CHIEF, METRO TACTICAL DIVISION, LOS ANGELES POLICE DEPARTMENT**

Mr. MORRISON. Yes, sir.

Mr. BRYANT of Tennessee. And I expressed concern over the issue of the lack of the element of surprise in this raid, and we have talked to a couple of panels since that time, and we have had from the actual participants and their superiors different stories as to what they should have done when the element of surprise was lost in this raid, the initial thrust on February 28, 1993.

And as I mentioned yesterday as a former Army prosecutor and former U.S. attorney and a defender of sheriffs in civil litigation during my career, I am very much aware when you go out there on a raid such as this and you lose the element of surprise, there are only two things that can happen. One is good and one is bad. The good thing is the person there accepts the warrant peacefully; the bad thing is what happened here at Waco and caused the loss of 4 people and 20 people injured on the ATF side and ultimately led to the second disaster when the civilians were lost in April.

I wanted to ask you if you could tell me how important—well, let me back up and ask it this way: In the context of serving a warrant, in this case they had an arrest warrant for David Koresh and they had a search warrant for the 77 acres, the property there. They could have been served separately; could they not?

Mr. MORRISON. Yes, sir, that is legally possible, yes, sir.

Mr. BRYANT of Tennessee. You could catch Mr. Koresh off the compound and serve the arrest warrant on him and arrest him, and then subsequently go out and serve the search warrant on the property, which that had to be done?

Mr. MORRISON. Yes, sir.

Mr. BRYANT of Tennessee. Now, in a dynamic raid, a dynamic attack such as this, in the context of serving warrants, where do the warrants go? Who has the warrants and where is that person?

Mr. MORRISON. Well, it depends on the jurisdiction. I am not totally familiar with the restrictions on the Federal agencies, but you have to get basically a no-knock warrant in the State of California. You have to have that by the judge. You have to explain the need for the type of service that you are going to do. If you do not have that legal condition in the service of the warrant, then dynamic entry is not an option that you have, so you are limited by the legal considerations. If you develop to the satisfaction of the court the

need for surprise, then you have the warrant in your back pocket basically but you are not serving it on anybody until you make entry.

Mr. BRYANT of Tennessee. Was the object here on February 28, 1993, to not knock but rather go up and kick the door down and go in? Was there a prerequisite—

Mr. MORRISON. The object here was to go in. I believe that the warrant provided for a no-knock entry.

Mr. BRYANT of Tennessee. Where would the warrant have been in that situation? Where should the warrant have been? Did it make any difference?

Mr. MORRISON. The warrant would be with the serving—or with the responding agency, in this case with ATF, and there should have been somebody designated to have the warrant or the warrant information.

Mr. BRYANT of Tennessee. But isn't the warrant normally carried to the door? What if Mr. Koresh had come to the door and said, OK, I am here, what have you got for me? Should not that person have given him a warrant?

Mr. MORRISON. I am not legally or I am not experienced and qualified to answer for the Federal side of the house. My whole experience has been in State and local government. I can only speak from my knowledge of California. I am not trying to be evasive there, sir. I think you need to ask a Federal agent that.

Mr. BRYANT of Tennessee. But at a minimum the tactical side of this raid should have had clear guidance on the possibility of aborting that raid and when they could have done it in the event the element of surprise was lost, that should have been a clear message up and down the chain of command; should it not?

Mr. MORRISON. That should—ordinarily the standard is that that is part of the tactical plan, when the tactical plan is approved, and if it is going to be a dynamic entry you lose the element of surprise, you normally will abort the dynamic entry unless you have a well, clearly developed contingency plan for an alternate means to do that.

Mr. BRYANT of Tennessee. Did you see any of those in this particular incident, in this particular plan?

Mr. MORRISON. Let me answer that by saying what I was aware of. I believe the element of surprise was critical to the service of this warrant. I believe the element of surprise was lost and I believe the raid should have aborted.

Mr. BRYANT of Tennessee. Could I ask Mr. Evans the same question, if you followed me.

Mr. EVANS. I am sorry I did not.

Mr. BRYANT of Tennessee. The element of surprise—

Mr. EVANS. I need to correct one thing. There was not permission for a no-knock given in this warrant. We had a hearing about that issue. The warrant was not a no-knock warrant.

Mr. BRYANT of Tennessee. What would have been the process, then—

Mr. ZELIFF. The time of the gentleman has expired.

I let you go to finish up one. When you start jumping to another I have to call it.

Mr. Condit from California, you have 5 minutes.

Mr. CONDIT. Thank you, Mr. Chairman.

I would like in the record to indicate I have been on the floor for the last couple of hours debating and participating in the agriculture appropriations bill that is on the floor.

I have not been here. I apologize to the witnesses and to you but it was necessary for me to be on the floor.

Mr. ZELIFF. Your absence was very much noted.

Mr. CONDIT. Thank you.

I yield to Mr. Brewster from Oklahoma for my time, Mr. Chairman.

Mr. BREWSTER. Thank you, Mr. Condit.

Would you also like to mention that your amendment is one?

Mr. CONDIT. Yes.

Mr. BREWSTER. Mr. Oboyski, you made a point in your statement a moment ago that I have brought up a couple of times to other people. David Koresh was not a good guy. I think anybody that has listened to what has gone on has to believe that at this point.

I think there is ample evidence that everyone should understand there is a high likelihood that he had converted semiautomatic weapons into fully automatic weapons; yet it amazes me that ATF agents were asked to go in there underarmed, in my opinion. I have had a chance to go to Quantico and shoot fully automatic weapons that FBI had and other agencies and it amazes me that your people went much less armed than the people who were in the compound.

Mr. OBOYSKI. I believe that the plan was to get in there as quickly as possible, even though they did not have a no-knock warrant, and to get between the men and the firearms. But I would like to add the fact that we do this every day. This is nothing new. We do this every single day.

We go out there with a warrant, knock, announce. When we don't get the proper response, we knock the door down and we try to get in there as quick as possible to separate the bad guy from the bad weapons that will be used against us. This is nothing new. This goes on every single day. State, local, and Federal law enforcement, ATF makes hundreds and hundreds of arrests like this.

Mr. BREWSTER. Now, wait a minute. You don't every day go into a compound that has 300 or 400 weapons and 75 or 80 people. You do make raids every day, you do a lot of good things in separating criminals from weapons, but I don't think every day you go into a compound such as this. My point is you don't have to use fully automatic weapons, but you need to have the capability in case something goes wrong.

Mr. OBOYSKI. You are right.

Mr. BREWSTER. You had no place to hide, looking at the area around the building, and you weren't armed as well as the guy inside. There has to be a contingency plan.

Mr. OBOYSKI. You are absolutely right. I believe that one of the problems that ATF faced at that compound was the structure itself; that if you go in with an overwhelming firepower with fully automatic weapons and start spraying bullets all over the place, then you would have had children laying all over the place.

Mr. BREWSTER. I agree. You could not do that.

Mr. OBOYSKI. You have to strike a balance. In New York City we are deathly afraid of firing a round that will go out a window and hit a woman a block away, reading a newspaper. We are cognizant of the structure, the area, and even though we may be outarmed as far as firepower, we have to use other methods such as flash-bangs, such as dynamic entries, such as the equipment we have to wear, so we don't get into a big firefight.

Mr. BREWSTER. Ms. Sparks, I was certainly impressed with the written and oral testimony that you did. It is apparent that you have spent a lot of time thinking about everything involved, it is apparent that you have a deep feeling for the children that you worked with with the Texas protective group there. I admire your thoughts on this and certainly appreciate your conclusion at the end of it.

I yield back the balance of my time, Mr. Chairman.

Mr. ZELIFF. Thank you.

The Chair yields to Mr. Coble from North Carolina.

Mr. COBLE. I thank the Chairman.

Ladies and gentlemen, thank you for being here. Televised hearings have a way of going far afield. Everyone likes to have his respective mug on television. I guess I am no exception, so bear with us.

Mr. Morrison, yesterday we heard from a panel referring to Mr. Rodriguez, the undercover agent who left the compound and came back to the undercover house with the announcement that the surprise element had been lost. This was referred to as the golden egg of intelligence, but, the witness continued, it was ignored. It seems to me, conversely, it probably accelerated the decision to raid, with that knowledge given to them by Mr. Rodriguez. Given this scenario, Mr. Morrison, if you will evaluate the decision to commence with the raid with that background.

Mr. MORRISON. That background, sir, has to be taken into consideration with the raid plan that existed. That raid plan called for other components that were equally critical to the announcement by the undercover officer; that is that the other raid components had to be in place if they were going to proceed having lost that element of surprise. That probably would have been a wise decision if the person in charge was aware of all those components.

I think that by losing the element of surprise, clearly that was an issue to be considered. But by not having certain prepositioned, or rather planned positions in place or without knowing that they were in place to proceed with the raid in a fragmented manner, the command and the control aspects of that raid were lost. That would be my concern. So I am not trying to avoid your question. The element of surprise I think was critical.

The concern that was expressed by the undercover officer I believe was critical and needed to be evaluated. It clearly needed to be evaluated in the course of other elements of the plan. And when the communication is isolated so that all elements of the raiding party from the units going in the front door to the person in charge of the whole thing aren't talking to each other or cannot talk to each other, then there is a serious jeopardy for the entry officers.

Mr. COBLE. Thank you.



Mr. Evans you are a criminal lawyer, defense lawyer for the most part. Oftentimes, people uninformed might casually respond to evidence that might be missing as incidental. Oftentimes, missing evidence, though presumably incidental, can be very significant in the turn of a trial. Of the two matching metal front doors, it is my belief that only one has been recovered, indicating that from something of the legions of paper I have read that indicate that the shots came from outside the compound. What became of the other door?

Mr. EVANS. I do not know, but it is very troubling.

Mr. COBLE. It is very troublesome.

Mr. EVANS. Very troublesome again because of the weakness of the excuse about why they couldn't come up with it. We were told it must have burned up in the fire. The trouble with that is it is a big metal door and there were other metal doors inside in hotter places that didn't burn up and there were cans of food in there that didn't burn up. A door like that isn't going to totally vaporize. Some remnant of it would be around.

Mr. COBLE. Mr. Morrison, comment about either the presence or the lack of contingency plans that were in place in the event the dynamic entry went sour.

Mr. MORRISON. I believe that, first of all, that is covered in my independent report that is contained in the Treasury report. I referenced the lack of contingency plan.

As a manager of special operations, I would not have approved the plan for—without contingency, for several reasons, ones that I have mentioned already: the exposure of that area, the fact that, unlike making raids in urban areas, this was a rural area widely exposed.

There were a number of hazards present that were known and considered by the tactical planners. I think based on the information that they had, they did an excellent job of putting together a plan. But there was a lot of information available to ATF that was not passed on to the tactical planners; critical information. Therefore, to go into that type of a dynamic entry in the context of the topography of the location, the types of buildings, the known weaponry, the information contained in the search warrant, it was critical to have contingency plans, not only for if they lost the element of surprise or if they had to abort the service of the warrant, but also if they ran into something they hadn't expected.

For example, if they started taking hostile fire before they got to the front door, they had people in conveyances that could not easily move out of that area. What was the ability to cover them and extract them safely at that point?

I would have looked for those things in the plan, and that is basically in my report.

Mr. COBLE. Thank you.

Our Chairman gets anxious when the red light illuminates. I will conclude.

Thank you.

Mr. ZELIFF. Thank you.

I move on to Ms. Lofgren from California.

Ms. LOFGREN. Thank you, Mr. Chairman.

Ms. Sparks, you, obviously, care about children and care about the children whose welfare you investigated in Waco. I am wondering, since we don't have a lot of time, did you read the "Sinful Messiah" story in the Waco local newspaper?

Ms. SPARKS. We went to Dallas and I had no chance to read it.

Ms. LOFGREN. If I could summarize, it basically catalogs the young, very young girls 12, 13, who were the wives of David Koresh and that you referenced also that the men were celibate and gave their wives to Koresh, and the beatings and the like.

Had you developed information prior to the raid that would have led you to some of those same beliefs? Did you believe that was happening?

Ms. SPARKS. It is the same thing I said before, David never said anything directly but he would in scripture tell you what his belief was. When we interviewed children, they were very cautious.

Ms. LOFGREN. Did you talk to Mr. Aguilera who did a lot of research work for ATF prior to the raid?

Ms. SPARKS. I did.

Ms. LOFGREN. He had a lot of information from talking to ex-cult members along the lines of raping the little girls and the like. Did he share any of that with you or did you share anything with him of that nature or was it private?

Ms. SPARKS. He had my entire case file, but we shared information.

Ms. LOFGREN. So you both knew the same thing?

Ms. SPARKS. Yes.

Ms. LOFGREN. One of the things that struck me, the Laverne police were called in 1989 in California, Laverne, CA, they were called by the, I think it is the—Robyn Bunds, by then she was 19 and apparently Koresh had taken her son and they gave Koresh 48 hours to return the boy, which was done. But when the police returned, Koresh had gone to Texas with a 14-year-old girl, and Robyn Bunds explained what was happening, that he was raping this little girl. Were you ever notified in Texas that there was this rape going on by the California authorities? Apparently, the FBI was never notified either by Laverne police.

Ms. SPARKS. I had no information.

Ms. LOFGREN. Reading through the description of the compound, and I am familiar with California law on child abuse and neglect, not necessarily Texas law, but as I heard the physical description of that compound with the various hazards, the weapons, the propane tanks, no plumbing, so that waste, human waste was in buckets. In my county those children would have been removed for general neglect, if not for abuse. That didn't happen in this case. Why didn't that happen?

Ms. SPARKS. Well, in Texas we are really invested in the family and our first option is to try to work with those families and try to get them to make the necessary repairs.

Ms. LOFGREN. But your case was closed. You weren't working with them for the repairs, right?

Ms. SPARKS. Correct.

Ms. LOFGREN. I am sympathetic to your position. I think people tried to do the best they could with the information they had, but I have a concern that the strict law enforcement raid approach as

approved did not prove effective in dealing with this particular cult and their psychology.

You said you disagreed with it. You dealt with the agents, you had interface with them. Do you think that there was disregard for the welfare of these kids or just a misread of the situation—what do you think was going on in terms of the decisionmaking or how the line agents felt, for example?

Ms. SPARKS. I don't know how the decision was made. I still tried to get that. But I think they had no malicious intent. I think they had no idea—I think they thought when they rounded about that those people would give up. They were pretty shocked to see what happened. I was at the command post the night of the raid and it was like a funeral. It was really tragic.

Mr. ZELIFF. The gentlelady's time has expired.

I yield now to Mr. Blute from Massachusetts.

Mr. BLUTE. Thank you, Mr. Chairman.

I would like to thank all the witnesses for your testimony. I would like to focus in on Mr. Morrison, if I could.

I see you are LAPD and you have had extensive experience in these types of raids; is that correct?

Mr. MORRISON. Yes, sir.

Mr. BLUTE. You were on the SWAT team in Los Angeles; is that correct?

Mr. MORRISON. Yes, sir, in 1965.

Mr. BLUTE. My view is that intelligence problems in this raid and undercover problems led to some type of future problem that was very dangerous to ATF agents. You in your report agree with that and you state that intelligence was compromised from the starting point of the investigation up to and including the hour before the raid.

I think the testimony that this committee has heard for the first few days of this hearing backs that up totally. Time and time again, you hear about intelligence problems and problems with the undercover operation. But I want to ask you particularly, what in your judgment, how was the intelligence compromised in this case?

Mr. MORRISON. Principally, the intelligence was compromised by a lack of case management for intelligence. The procedure, if there was one, and we did not have—during the Treasury investigation the investigators were looking for all published procedures and policies, and we were not able to develop any clearly existing policy or procedure. With that as a background, there was no case management for the intelligence function that I could find.

Second, there were great lapses in the intelligence function in that the information was not reported sequentially, it was not brought to closure. If information, for example, was reported and followed up on, it turned out to be erroneous, that needed to be noted in the intelligence log so it wouldn't be subsequently passed on for purposes of either obtaining a warrant or expending additional investigative man-hours.

Third: When operations were mounted for intelligence-gathering purposes, there was no solid supervision over the agents involved.

Mr. BLUTE. Picking up on that, what was your opinion of the relative quality of the undercover work, of the agents who were pre-

tending to be someone who they weren't, a classic undercover roll; what was your opinion of the quality of that work?

Mr. MORRISON. Let me preface that I am going to be a pure Monday-morning quarterback when I say this—there were two parts of this: One, the cover of the college students was bogus and it was poorly handled. It was a very difficult place to surveil, a very difficult place to mount an undercover operation.

I think the second concern, I believe that this is well covered in the Treasury Department's report of September 1993, is that there was concern that the undercover agent selected to go into the place did not have the experience or the training to handle the type of stresses that were going to be presented to him in that process.

I have done undercover work, I have managed undercover work and that is one of the things that I am very sensitive to is the stability and the preparation of an agent or an officer to go into an undercover capacity and to survive the stresses.

Mr. BLUTE. It is a very dangerous thing normally?

Mr. MORRISON. Yes, for several reasons; first, the personal danger to the officer, and second, the accuracy of the intelligence the officer can bring out. If the officer's mind gets clouded with fear, we won't get accurate reports.

Mr. BLUTE. You also note in your report that the absence of management review led to a serious breach of integrity, falsification of documents. What documents, to your knowledge, were falsified?

Mr. MORRISON. I believe in part that that was brought out during the course of the investigation. This was information provided to me and to the other technical and tactical experts by the investigating team of Treasury, that there was information known and denied prior to the raid plan. There was information known and apparently either destroyed or falsely articulated after the raid.

We recognized, as outsiders brought in to assist the Treasury Department, we recognized the very difficult task facing the Treasury investigators having to wait so long, having such a cooling off period before they could start their investigation. But there were large gaps in the stated position of on-duty agents, supervisor managers and the facts of the case.

Mr. BLUTE. I thank the gentleman.

Thank you, Mr. Chairman.

Mr. ZELIFF. Thank you.

The Chair yields to Mr. Wise of West Virginia.

Mr. WISE. Mr. Chairman, I yield 1 minute to Mr. Schumer.

Mr. SCHUMER. I thank the gentleman.

I just wanted to follow up on the Justice Department policy of stopping criminal investigations, because my colleague from Georgia, Mr. Barr, said that some third party, independent third party told him the Department of Justice policy is not what I said it was. I would like to ask unanimous consent to submit for the record the Justice Department's statement on law enforcement procedures and I would like to quickly read it. Joann Harris—

Mr. BARR. Reserving the right to object.

Is this the Department of Justice news release that they just issued?

Mr. SCHUMER. That is correct.

Mr. BARR. I would like the record to reflect this is simply a news release coming out of the Department of Justice in response to this hearing.

[The information follows:]



## Department of Justice

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### JUSTICE DEPARTMENT STATEMENT ON LAW ENFORCEMENT PROCEDURES

WASHINGTON, D.C. -- Jo Ann Harris, Assistant Attorney General for the Criminal Division of the Justice Department issued the following statement today:

"During the past two days of Congressional hearings on the tragedy in Waco, a long-standing Justice Department practice has been badly mis-characterized. Documents have been produced at the hearing which suggest that the Justice Department requested the Treasury Department temporarily hold-off from interviewing potential witnesses in the Justice Department's criminal investigation of David Koresh and the Branch Davidians. Such a request would not be the least bit unusual.

"The Department often requests that Congressional committees and other agencies of the federal government temporarily refrain from pursuing investigations which could compromise and interfere with our criminal investigation. It is simply bad law enforcement to conduct simultaneous interviews with potential criminal trial witnesses. This is Prosecution 101, and any prosecutor worth his or her salt should know it."

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95-409

Mr. WISE. I would like the record to reflect that wasn't on my time.

Mr. SCHUMER. That is correct.

Mr. Barr can characterize it as he wishes. It is on Department of Justice letterhead, it is a Justice Department statement on law enforcement procedures, Joann Harris, hardly part of the news department.

Mr. SHADEGG. Reserving the right to object.

Mr. SCHUMER. No. Not on my time.

Mr. ZELIFF. State your objection.

Mr. SHADEGG. Well, I don't see the purpose of a press release being inserted in this hearing. How is that germane? If the Justice Department wants to come forward and testify, they can come forward and testify, but can we insert new testimony from any source by simply walking in here and saying, by the way, I have a press release that I would like to put into the record.

Mr. WISE. Mr. Chairman, I have watched press releases be distributed involved with the Waco situation. You inserted as exhibit 3, Ms. Sparks' thoughts, which nobody could even identify as to who put them in. When did we suddenly get this high standard?

Mr. SCHIFF. Mr. Chairman, I want to yield to the gentleman to ask a question about it. I do not intend to object.

Mr. SCHUMER. As long as it is not on my time.

Mr. SCHIFF. I believe I have a reservation. I would yield to the gentleman from New York; I just wonder if the issue is appropriate policy of the Department of Justice and was it followed here or not, do they not have a policy manual rather than a press release that might be admitted for the record?

I yield.

Mr. SCHUMER. Thank you.

I would say to the gentleman that this is the Department of Justice policy and I defy anybody to challenge it.

Mr. WISE. The Justice Department will be here in a few days.

Mr. SCHUMER. I haven't taken my minute.

Mr. ZELIFF. You have 15 seconds.

Mr. SCHUMER. The policy says what I said, and the last sentence says this is prosecution 101, and any prosecutor worth his or her salt should know it. The entire statement which I will distribute to every member of the committee and everyone in the room, since I am not being allowed to finish reading it even though I didn't get my 1 minute, says that the Justice Department policy of doing this is routine and was done here in a routine way, as it was under Reagan, under Bush, under Clinton.

Mr. ZELIFF. That was a tough battle, but you got it. That was the best performance of the whole week.

Mr. WISE. Mr. Chairman—

Mr. ZELIFF. We will round it off and give you 2.5 minutes.

Mr. WISE. Mr. Chairman, in West Virginia, is that known as a New York minute?

Mr. ZELIFF. We will try to convert that to a West Virginia long 2.5 minutes.

Mr. WISE. Mr. Morrison, I appreciate what you have said. As I recall, you were involved in the compilation of this report?

Mr. MORRISON. No, sir, not in the compilation of the report. I was involved as a technical and tactical advisor to the Treasury investigative team. I did prepare a independent, totally independent report that is part of that report, but I did not prepare the report.

Mr. WISE. Thank you for that clarification.

Have you read this report?

Mr. MORRISON. Yes, sir, I have.

Mr. WISE. Because the point I would like to make is what you are doing is confirming I believe every criticism that goes on for 10 pages in here about lack of communication, the loss of the element of surprise, failure to have a contingency plan. All of that is in this report; is it not?

Mr. MORRISON. Yes, sir, as I have indicated in my testimony yesterday and previously today, that these are things that I articulated prior to September 1993.

Mr. WISE. So what you are doing is confirming, and I think it is valuable for people to hear that, but in terms of learning new criticisms about that raid, it is all in here to begin with?

Mr. MORRISON. Sir, I was brought here under subpoena. I answer the questions of Members of Congress when they ask me a question and I am doing that to the best of my ability.

Mr. WISE. But it is also important to acknowledge that what you are testifying to has already been covered in September 1993.

Turning quickly to Mr. Evans, as I understand it, you had represented the Davidians pro bono. Do you have any kind of financial interest, book contracts, movie contracts, continued representation of any of those associated with the Davidian movement ongoing at this point?

Mr. EVANS. Not a one, and I don't represent the Davidians plural. I represented one man, Norman Allison. He is back in England with his family—

Mr. WISE. But you don't have any kind of financial contracts for books, movies, any financial interest that might come out, no outside interest.

Mr. EVANS. No, sir.

Mr. WISE. Thank you.

Mr. ZELIFF. I yield to Mr. Chabot from Ohio.

Mr. CHABOT. Thank you, Mr. Chairman.

I will yield 1 minute to my good friend and colleague from Georgia, Mr. Barr.

Mr. BARR. Thank you.

Well, curiouser and curiouser, as Alice said. We have the Department of Justice now, which presumably wasn't paying any attention to what is going on here because nothing new is coming out of it, feeling the need to have the Assistant Attorney General for the Criminal Division find nothing better to do than to waste time sending out a news release for spin control.

Isn't it interesting; if nothing new were coming out of these hearings, why would they need to do this? Curiouser than that is the fact that we have an assistant U.S. attorney with this Department of Justice who is in charge of these cases who sat at this table 2 days ago, looked at these same documents and presumably he has been to prosecution 101 as well, and he said this is not standard operating procedure and he has never seen anything like it. So I



suspect that the Department of Justice may want to accept him to their new prosecution 101.

Mr. Evans, for the record, have you in your experience handling cases in criminal court, seen documents like these? And I would note for the record that if this were standard operating the procedure, the ATF would be stopped in every single case in which they conduct a shooting review, if this document reflected consistent Department of Justice policy.

Mr. EVANS. I must hope that whoever wrote that press release has not actually scrutinized these documents to see what they really say, because if they see the words on here, they would know that a statement like that says that they could violate the Constitution of the United States.

Mr. BARR. Thank you.

Mr. CHABOT. A couple of questions, Ms. Sparks.

Thank you for your testimony thus far today and for the care that you took in this matter, particularly with respect to the children in Waco.

You prepared a statement that we received, and in the statement you said that there were many dynamics that contributed to the end result at Mount Carmel, including, in some cases, attitudes of individuals who felt that they were accountable to no one. Who are the individuals that you were talking about there, and what did you mean by your statement that they felt that they were accountable to no one?

Ms. SPARKS. When I wrote that, all through the agencies, States and Federal, there were people who didn't think they needed to listen. They thought they had all the answers. They had a task to do and they were going to do it. You couldn't get them to even stop and listen to information that could have been vital. They just thought they were above it.

Mr. CHABOT. You had the opportunity to go to the compound a number of times. I think you mentioned at least three times?

Ms. SPARKS. That is correct.

Mr. CHABOT. When you went there, did you ever see evidence or hear anybody talk about any sort of drugs, or in particular a methamphetamine drug lab of any sort?

Ms. SPARKS. Yes. We talked about it with two different people. David Koresh explained to me that the previous prophet had been involved in drugs, had a drug lab there, and said that he had given that material, the needles and the drug book explaining how to make drugs, he had given that all to the sheriff's department in McLennan County.

Mr. CHABOT. So you are saying it was gone already, then?

Ms. SPARKS. Yes.

Mr. CHABOT. You had met with the children a number of times. How old were the kids that were there? What was the youngest?

Ms. SPARKS. I think the youngest was about 3 months old, as I recall. The oldest one, we didn't get to see all the teenage girls. There was one 17-year-old girl who was there.

Mr. CHABOT. I think you stated that was your principal concern, was the children that were in the facility?

Ms. SPARKS. Yes, sir.

Mr. CHABOT. I want to say, because my time is just about up here, that I have tremendous sympathy for the law enforcement agencies and their families that were killed here. Also, I have tremendous sympathy for the children that were in this facility. They were completely innocent in this matter.

The gun-toting minions of David Koresh, those folks, I have no sympathy at all for the adults that were responsible for this, but the law enforcement officers and children in particular were completely innocent in this matter.

Mr. ZELIFF. The gentleman's time is expired.

The Chair recognizes Ms. Slaughter from New York for 5 minutes.

Ms. SLAUGHTER. Thank you, Mr. Chairman.

Ms. SPARKS, I am very impressed with your hard work and despite the fact that you knew enforcement was working against you, you went on to do your job. Every trip that you made there was carefully controlled; is that correct? You only saw what David Koresh allowed you to see?

Ms. SPARKS. We always felt that we weren't getting the full picture, that things were being kept from us, and that was verified during some of the interactions.

Ms. SLAUGHTER. At that point, you did not understand that every young girl knew that at some time in her life she would be raped by David Koresh?

Ms. SPARKS. I knew the allegation was that, but we didn't get that specific information in our initial investigation.

Ms. SLAUGHTER. He did not talk to you about guns?

Ms. SPARKS. David Koresh was very open about the guns.

Ms. SLAUGHTER. That he had the guns there?

Ms. SPARKS. Yes. He was very open about that.

Ms. SLAUGHTER. I wish that the law enforcement people had listened to you more. The Federal officers' real job was to serve warrants and look for guns and not to understand his religion, which should be irrelevant here. But given your knowledge of David Koresh and his followers, do I understand you believe there was some way someone could have reached him so that he would have submitted to a warrant and arrest?

Ms. SPARKS. My point is that if they had separated him from his followers, to execute those things simultaneously, perhaps to get them apart, the prophecy could not have been fulfilled because the prophecy was that he had to die with the saints. So they wouldn't have acted on this. He had been arrested before.

Ms. SLAUGHTER. But you think the people back in the compound then, given the fact that the people in the compound had been so indoctrinated is it your belief that they would not have gone on with what he wanted to do? Was there not a junior prophet or second prophet or whatever coming up?

Ms. SPARKS. No. David was the only Lamb and they would not have acted because they had to die with him. That was the prophecy.

Ms. SLAUGHTER. Knowing what we know now, had he given himself up for arrest, he would certainly have been charged with rape, child abuse, perhaps incest; as I understand it, no other men in the

compound had sex, so the small babies you saw must have been his own, would you surmise that?

Ms. SPARKS. Yes.

Ms. SLAUGHTER. How many children do you think he had fathered in that compound?

Ms. SPARKS. Two years ago I could have told you. I haven't looked at those records in a long time. There were a lot of young children that belonged to him.

Ms. SLAUGHTER. We know that in this kind of cultish belief people are able to suspend their own thoughts and follow slavishly someone into death, and even allow their wives to be taken away from them. Was it possible one of the reasons he was so rarely seen, was because if arrested, and having been charged with the crimes I have mentioned, that he would have faced the rest of his life in prison?

Ms. SPARKS. Remember, he thought he was the Lamb. He always assumed he could talk his way out of anything.

Ms. SLAUGHTER. You believe that his followers, once he was gone, would have awakened like sleeping beauty with the kiss of the prince or something, and said, lo, we have been under this wicked spell and now we are going to let the ATF people come in peaceably?

Ms. SPARKS. They would have waited for word from David about what to do.

Ms. SLAUGHTER. And what word would David have sent them.

Ms. SPARKS. I have no idea.

Mrs. SLAUGHTER. Wouldn't it have been pretty likely that he would want them to go on and fulfill his prophecy?

The reason I am asking you, is it seems to me, that the fewer people that were to testify against David Koresh and what had been happening in the compound and the fewer little girls like Kiri, who could come out and tell us what their life was like, the better off he would have been facing court charges that he would have faced. So do you think that he would have ever given himself up?

Ms. SPARKS. He had been arrested in the past and I believe—

Mr. SLAUGHTER. In 1989 when he had the shoot-out with Mr. Rodin.

Ms. SPARKS. Right.

Ms. SLAUGHTER. He couldn't have pronounced himself the Lamb and the prophet at that point because the Lamb and the prophet at that point was Mr. Rodin; correct?

Ms. SPARKS. Not to David Koresh.

Ms. SLAUGHTER. But the fact that he wanted to become the Lamb and the prophet—

Ms. SPARKS. In his mind he already was the Lamb.

Ms. SLAUGHTER. I see that my time is up, but it would seem to me that he would do anything in this world, and everybody else in there with him, to keep from being arrested or taken, including setting fire to that compound and burning those people to death.

Mr. ZELIFF. You are correct, your time is up.

The Chair recognizes Mr. Schiff from New Mexico for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman.

Before I begin questions I think it is appropriate to emphasize what ought to be the focal points shown thus far today. First, it

was argued that this hearing has been tainted by staff contacts with the National Rifle Association. I have to say that if any Cabinet member called up a member of this committee and tried to influence questions, if that occurred, that would be a far greater taint than anything that could be done at the staff level.

There has been a lot of discussion of misrepresentation, and if a consultant called Ms. Sparks and misrepresented who she was and who she was with, that is not defensible, but that consultant doesn't work for the U.S. Congress. The Bureau of Alcohol, Tobacco and Firearms does. The Bureau of Alcohol, Tobacco and Firearms misrepresented to the U.S. military the nature of this raid. Although they knew it was a firearms raid, they called it a drug raid to take down a methamphetamine lab because that was the only way they could get the training they wanted from the particular Army unit that they contacted, because that Army unit had only a antidrug mission.

And finally, we have heard about concern for children, and certainly Mr. Koresh acted despicably toward the children who lived with him in that compound, but I wonder how much concern for children our Government showed when, for example, the No. 2 person at the Department of Treasury, Roger Altman for whom the BATF works, advises his boss, Secretary Bentsen on April 15, 1993, that he believes the FBI is going to take more drastic action to end the siege, and he states, Mr. Altman, the risks of a tragedy are there.

And Secretary Bentsen's response was basically, that is not our Department's problem anymore. That was the governmental version of saying, that is not my table.

Now, it is true that the Department of Justice and Attorney General Reno were in charge at that time but that didn't prevent Secretary Bentsen in forwarding this memo from Mr. Altman to the Justice Department so that the Attorney General had the benefit of these views. That brings me to my questions.

Ms. Sparks, let me say I was a criminal prosecutor before I got to Congress and I have prosecuted child abuse cases and I know the difficulty of putting together evidence in the cases you worked on. I would like to ask your view of this situation. You said that the raid on the Branch Davidian compound was a fatal mistake and you went on to explain that you knew there would be armed resistance, and you didn't think the ATF command really believed that would be the case. I would like to take it a step further, though. You have worked with law enforcement frequently in your position, is that right?

Ms. SPARKS. Yes, sir.

Mr. SCHIFF. I am going to ask you as another law enforcement professional, the ATF did have an arrest warrant for Mr. Koresh and a search warrant. Or suppose that you had been able to get enough evidence to charge Mr. Koresh with child abuse, which I understand was difficult to do, but suppose that the Texas authorities had been able to get an arrest warrant for Mr. Koresh, or a search warrant. What would have been the best way to enforce those warrants; because certainly the law enforcement agencies do have a obligation to take action if they have a valid warrant. In other words, what would you have done?

Ms. SPARKS. Well, we were already involved, which was one of the points I was trying to make when our case was closed. We had an opportunity to get to know the children better. I think that relationship would have been helpful. We often have law enforcement assist when we are interviewing perpetrators and they are brought in, or we meet with them—

Mr. SCHIFF. Excuse me. My time is about to run out. In this situation, with the arrest warrant that ATF had, let's leave it that way, what would you have done to enforce the arrest and search warrant? How would you have gone about the situation different from the raid you call a fatal mistake?

Ms. SPARKS. I don't have all the information they had. But for me, I would have served the arrest warrant on David outside the group and then maybe simultaneously did the search warrant. I am not knowledgeable in those things, but this was predictable.

Mr. SCHIFF. Thank you.

Mr. ZELIFF. Thank you.

The gentleman from Mississippi for 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman.

I do want to thank the panel for sticking around.

Ms. Sparks, in retrospect, especially after what the young lady, Kiri Jewell, said the other day, did the Texas Child Protective Agency do their job? Did they protect those children from David Koresh?

Ms. SPARKS. My agency and I were in controversy about that.

Mr. TAYLOR. Isn't it safe to say they failed?

Ms. SPARKS. Mistakes were definitely made.

Mr. TAYLOR. So the law didn't give you everything you needed to do your job; did it?

Ms. SPARKS. That was the most frustrating part.

Mr. TAYLOR. So contrary to all these people talking about a government out of control, you didn't have the vehicle through the law to do your job to protect those kids; did you?

Ms. SPARKS. That is right.

Mr. TAYLOR. I want that for the record, because people keep talking about a government out of control and here is a woman who suspected something was wrong and yet the laws of this country protected the criminal more than those little kids and didn't let you do your job.

I have asked Treasury for information. This is testimony that they have supplied, and it says that Ms. Sparks stated during her conversations with Koresh that he described himself to her as the messenger from God and that when he reveals himself, the Los Angeles, CA, riots will pale in comparison to what was going to happen in Waco, TX. Ms. Sparks stated that when she asked him to elaborate, all he would say was that the world was coming to an end and when it happens it will be a military-style operation and that all nonbelievers would have to suffer.

Is it safe to say the nonbelievers are the people who weren't a member of that cult?

Ms. SPARKS. Everybody who was a nonbeliever he considered Babylon.

Mr. TAYLOR. So everyone other than his cult was going to suffer.

Ms. SPARKS. That is right.

Mr. TAYLOR. Did you consider him a dangerous person in your heart?

Ms. SPARKS. Yes.

Mr. TAYLOR. Were you ever afraid when you were around him?

Ms. SPARKS. I never put myself in a position that I felt I was in real danger, but he was threatening, yes.

Mr. TAYLOR. Mr. Evans, I have a question for you. I missed all your testimony, but I take it you are a criminal defense attorney? That is how you make your living?

Mr. EVANS. Yes, sir. I am proud of it.

Mr. TAYLOR. Are you good at it?

Mr. EVANS. I am good at it and I am proud of it.

Mr. TAYLOR. Have most of the people you defended gotten off?

Mr. EVANS. Of course not, because about 90 percent of the people who go to trial are convicted.

Mr. TAYLOR. I am talking about in your instances?

Mr. EVANS. I am no exception.

Mr. TAYLOR. So some of the people you defended got convicted of breaking the law?

Mr. EVANS. Absolutely.

Mr. TAYLOR. If you ever went into a trial and only the prosecution could subpoena witnesses, how would you feel and what would you do?

Mr. EVANS. Well, I suffer from that imbalance all the time, Congressman.

Mr. TAYLOR. Is it legal?

Mr. EVANS. It—I will put it like this—the prosecution has much more subpoena power than we ever do, although we have the right to subpoena but not the resources.

Mr. TAYLOR. Would you challenge that trial if you were prohibited by the courts from subpoenaing people who could speak on behalf of your clients?

Mr. EVANS. I wouldn't—it depends.

Mr. TAYLOR. I am asking.

Mr. EVANS. If I was absolutely prohibited, of course, I would challenge it and then the question would go, well, was the subpoena you wanted material or not?

Mr. TAYLOR. You have a client, he has people that can prove his case overwhelmingly, who can say this never should have happened, I shouldn't be going to trial, and you are prohibited by the court from letting those people speak before the court, what would you do?

Mr. EVANS. I would have to prove that, but if I could show a judge that was in fact material and did have the kind of evidence you described, I can't imagine the judge not issuing a subpoena. And I believe it would be unconstitutional—

Mr. TAYLOR. You are obviously a decent person and a good man. As a decent person and good man, don't you think it would be fair to those 4 dead ATF agents and the 20 who were wounded, that the people wanting to speak on behalf of them and the testimony you would like to have on behalf of them, be submitted to the people of America in this room? We are talking a sense of fairness. I said that you expect fairness. I think those people deserve fairness.

Mr. EVANS. I think all the people that died in this outrage should have the benefit of full and complete and fair hearings on the material issues of this case but not these rabbit trails and side issues that I have seen bantered about by both sides.

Mr. TAYLOR. But is someone who claims to have been held by Koresh for 3 months a rabbit trail, a side issue? Is someone who claims he had a hit list of people he was going to have eliminated, a side trail? Are the two reporters who published this article and then left town for fear for their lives, a side trail?

Mr. EVANS. They may not be. I might agree with you. I just don't know.

Mr. TAYLOR. I made a promise to everybody that every single panel whether favorable or unfavorable was going to be asked the same question. Does anything that any of you have seen or read or heard justify the murder of those 4 ATF agents and the wounding of the 20 more by David Koresh and his followers on the morning of February 28?

We will start with you, Ms. Sparks.

Ms. SPARKS. Nothing can justify that.

Mr. MORRISON. Previously asked and answered. I answered the question yesterday, sir.

Mr. TAYLOR. And you answered?

Mr. MORRISON. No justification.

Mr. EVANS. There can be a legal justification. Judge Smith in the trial gave it to the jury. I will read it for you as follows. Bear in mind that the jury has to decide whether these are the facts.

Mr. TAYLOR. I am asking your opinion, not the judge's.

Mr. EVANS. My opinion is that there could be a legal definition and a legal defense. If a defendant is not an aggressor and has reasonable grounds to believe that he is in eminent danger of death or serious bodily harm from which he could save himself only by using deadly force against his assailants, he has the right to employ deadly force in order to defend himself. In my mind, given these situations, I wouldn't feel that I would have the right to do that, but I can't get inside the minds of these people who—

Mr. ZELIFF. The gentleman's time has expired.

Mr. TAYLOR. These people are still answering the question. That is the procedure we have had all day.

Mr. KOLMAN. Absolutely not, and thank you for giving me an opportunity to finally say something.

Mr. TAYLOR. Thank you, sir.

Mr. OBOYSKI. On behalf of the 10,000 members, Federal agents that I represent, it is reprehensible for anyone to even think that those people had any right or any defense to kill those agents.

Thank you.

Mr. TAYLOR. Thank you, Mr. Chairman.

I thank the panel.

Mr. ZELIFF. The Chair recognizes Mr. Souder.

Mr. SOUDER. I would just like to note for the record that the witnesses that Mr. Taylor talks about calling, I understood yesterday that the agents who are in charge are suing them because they believe that their premature release of an article led to the death of their fellow agents. So while I understand the need for some background information, they did not exactly uphold what needed to be

done at that time either to protect the lives of the children in particular, who are clearly kind of forgotten in this incident.

I have heard a number of things here. One is that I was very touched the other day when Kiri Jewell was talking and she had been through this a number of times, but when she heard a number of other people talk about the fires and the deaths, tears came to her eyes as she heard about the other children dying. It brought back memories of those children and those deaths.

Ms. Sparks, you said that you felt that the agents didn't think they needed to listen, that they thought they were above it. I don't think anybody is questioning the dangers to a lot of law enforcement officials. I have many, many friends in these different agencies from having lived in northern Virginia in a neighborhood where many were people in law enforcement, but there is a feeling and a concern that it is getting a little bit, how should I say, the Showtime question, a little bit over aggressive and not sensitive enough, particularly when there were children involved in this incident.

I wanted to ask a question to Mr. Evans and regarding a comment that Mr. Oboyski made, which I believe he did not mean to go as wide, but it was a scary comment. He said the day is over when two people in a suit can issue a warrant. What is your reaction to that statement, Mr. Evans?

Mr. EVANS. I hope he really didn't mean that because it is frightening if taken literally that every time a police officer in this country executed a warrant of any kind without this kind of military garb, that is—we will be a military government rather than a civilian government if we let that continue.

Mr. SOUDER. Because there is no question, I don't believe in any of our minds, that when there are signs of eminent danger whether it be a drug case or an arms case, that is a little bit different, but we are worried about the mentality that seems to be moving through this country. As we have a breakdown of some of our standards of morality, we need law enforcement to realize that there are agents who try to keep calm in these situations.

One concern I have, we distributed a copy of a picture, we don't know whether it is a FBI or an ATF agent, on top of a tank with the American flag and two guns, after—it was clearly after the first and before the second event. There are a number of pictures that have been shown in the news. And there are also available—and I would ask that they be inserted in the record and distributed—where agents were standing in front of the building burning in the back, but this type of picture doesn't mean that there was any malicious intent by agents, that there was any desire to do that, but when people are, particularly little children are dying in the background or that you are trying to prepare for something that could lead to the death of children, this comes very close to show-boating, and I am very disappointed because I understand that people were trying to do the best they could in upholding the laws.

I am concerned about the mentality of this country, not that it is pervasive and not that it is there, but we need our law enforcement officials to help calm down the situation, just like we need all these madmen with their guns who are threatening their communities around them to disarm and not be so aggressive any time



somebody does come to the door, or we will wind up in a situation where we have tanks and armored vehicles coming in.

I wanted to put that into the record and express my concern that all law enforcement officials, if nothing else is coming out of this hearing say, be careful, don't repeat some of the errors that were made in this, and yet not take our side's questioning as condemning all law enforcement officials who every day their lives are on the line risking it, trying to uphold the laws.

Thank you, Mr. Chairman.

Mr. ZELIFF. The gentleman's time has expired.

The Chair yields to Mr. Shadegg for 5 minutes.

Mr. SHADEGG. Thank you, Mr. Chairman. I appreciate it.

Mr. Evans, I would like to start with you and focus on one issue that has now become somewhat central. There is a memo that you have a copy of from Ronald K. Noble, I guess it is from Sara Jones to Ronald K. Noble, dated September 17, 1993. I believe you had a blowup made of it. It goes into this issue of the Department of Justice ordering the ATF to stop its shooting review. Are you familiar with the memo I am referring to?

Mr. EVANS. Yes, I am.

Mr. SHADEGG. OK. We have just had interjected into this hearing by Mr. Schumer a press release put out by the Department of Justice which purports to state the Department of Justice's policy on this issue. Do you have a copy of that?

Mr. EVANS. Yes, I do.

Mr. SHADEGG. Have you had a chance to read that press release?

Mr. EVANS. Yes, I have.

Mr. SHADEGG. OK. It says in the first paragraph that it is not at all unusual for the Department of Justice to request an agency to temporarily hold off from interviewing potential witnesses in the Justice Department's criminal investigation, that it would be normal to do that. Then in the second paragraph it talks about the reason for that.

I want to go back and ask you, is there anything in the September 17 memo which suggests that when they advised Hartnett to stop the ATF shooting review that that was a temporary—they were making a request that they temporarily halt it?

Mr. EVANS. Absolutely not. To the contrary, it says that that is not the reason that they are suspending the interviews. It has nothing to do with temporarily holding off so that the criminal investigation can proceed, and they don't want too many cooks in the kitchen or fingers in the pot.

The stated reason for not interviewing anybody else and reducing their comments to writing in this document is immediately—that the review team immediately determined that these stories did not add up and that Johnston advised Hartnett to stop the shooting review, not for some prosecution 101 reason but because the ATF was creating Brady material. You have to understand that Brady means—indicates innocence.

Mr. SHADEGG. I understand exactly what you are saying. I want the listening audience to understand what is going on here.

First of all, you were reading from the memo. In this memo it says they determined that the stories didn't add up. They had two conflicting agents. They interviewed two agents. One said that one

agent had shot. The other said they had taken that agent's gun and there had been no shots fired from it. What they had was interviews that were producing evidence which was flat contradictory.

And they go on to say, stop the ATF shooting review because it is creating Brady material. Brady material is material which tends to go to prove the innocence of the defendant; isn't that right?

Mr. EVANS. Yes, and David Koresh wasn't on trial. We had 11 other souls on trial.

Mr. SHADEGG. Now, this Department of Justice press release that Mr. Schumer put into evidence or wanted to put into evidence specifically says that it is their normal policy to ask people to temporarily hold off. This was not a temporary holdoff, was it?

Mr. EVANS. No.

Mr. SHADEGG. It was permanent?

Mr. EVANS. In that sense, it was permanent. Well, the shooting review, it is my understanding that later on, months later, the shooting review team did come back through and that the Texas Rangers did come and interview those people, but it is apples and oranges.

Mr. SHADEGG. Well, if, in fact—the second paragraph of this press release says it is common to ask that simultaneous interviews not go forward so that you won't have confusion. But this wasn't—the issue of simultaneous interviews wasn't what was going on here, was it?

Mr. EVANS. Not at all.

Mr. SHADEGG. The memo itself details what was going on, and that was, they had two different agents describing the same event and saying different things about it.

Mr. EVANS. That is true. That is reiterated. That is not just an accidental mistake. That is reiterated throughout the documents. The word exculpatory is used twice. Asking questions to which would require us to create new documents, exculpatory, it is clear what they were doing.

Mr. SHADEGG. Let me make one more point. If this memo were to say we can't ever conduct a shooting review while there is an ongoing criminal investigation which is where the shooting occurred by the agent, they would never conduct a shooting review because there is always the ongoing, underlying case and indeed there is the case which leads to trial and then to appeal and then to appeal and then to appeal and then to appeal. And so if you could never do a shooting case, a shooting review while the underlying criminal investigation was going on or the criminal prosecution was going on, you could never do a shooting review, could you?

Mr. EVANS. You know what I think? That the Department spin on this now is like a lot of prosecutors have said about my clients in closing argument when they have incriminating documents like this and my clients have given some explanation. They get up and say what he is trying to do to you is say to you, are you going to believe me or your lying eyes? And I am telling you, who are you going to believe, some press release or the words that were written back then contemporaneously in 1993 before anybody had a chance to think about ever having these kind of hearings?

Mr. SHADEGG. Well, I would suggest that whoever wrote this press release either hadn't listened to the testimony at this hearing

or read the document that you were testifying about or they are intentionally trying to draw the attention off of what this document shows, and it looks to me like an attempt to confuse or an attempt to continue a coverup.

Mr. EVANS. I don't know.

Mr. SHADEGG. My time has expired.

Mr. EVANS. I hope not.

Mr. ZELIFF. The Chair recognizes Mr. McCollum for 7½ minutes.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

Mr. Morrison, I want to ask you one quick question. This is a book that you probably know Mr. Reavis, who testified earlier, wrote. In the book he tells a story about a fellow named Lynch who was a Deputy Sheriff, I believe, who went, the morning of the raid, to a command post for communications. It was at that post that he received, during the early part of this raid, a frantic 911 call from Wayne Martin, who was the Davidian attorney inside that compound.

He also tells the fact that Lynch could not, after he got Martin on the phone for several minutes, find any way to communicate with any of the raid party because they didn't have any telephones, a radio or anything to communicate with them.

Are you familiar with that and to what extent does that fit into what you have been telling us about the lack of communication or communication plan?

Mr. MORRISON. That is a several part question.

First of all, I am not familiar with the book or the text that is in that book. I am not familiar with the incident as related, sir. I did refer to my concern of the lack of appropriate communications with all the principals involved in this raid party, particularly the prompt relaying of information to the actual team that was making the approach, and so that is about all I can say.

Mr. MCCOLLUM. You would say, in light of what you know about the lack of communications, that would not be surprising if it were true?

Mr. MORRISON. I believe that the lack of communications was an issue, it was well developed within the investigation, and if the information that is in that book is accurate, it would probably be consistent with the concerns about the lack of communications previously established.

Mr. MCCOLLUM. Thank you.

Mr. Evans, in part of your testimony today you gave us a lot of written testimony. We haven't had much chance to go over some of that. One of the titles you have here is called subparagraph Showtime, and you say trial testimony revealed that the code word to launch the raid was Showtime. Can you tell us what that meant and what that was all about?

Mr. EVANS. Well, that is absolutely true. The agents swore under oath and testified that that was the code word to kick this raid off, was, OK, it's Showtime. And the next thing they said was, goggles down, weapons out, fingers off the trigger. Of course, there is some evidence we won't have time to go into that maybe one of those guns went off and shot that second pickup truck, but those were their instructions.

Mr. MCCOLLUM. Then after that you say in your testimony two separate public relation agents, Sharon Wheeler from Dallas, who is going to be one of our witnesses, and Francesca Breaux of Houston were assigned to the preraid video from the command headquarters showing a prepared public relations center with fax machines, telephones, and computers. Is that your testimony?

Mr. EVANS. That is my testimony. I have got the videotape with me.

Mr. MCCOLLUM. Well, it just seems interesting to me that if what Mr. Reavis had in mind when he wrote in his book and that if it is true, and it appears that it is, they didn't even have telephones or communications to get that 911 communication back and forth that Wayne Martin had from inside the compound for 20 minutes trying to stop the shooting. At the same time they had fax machines, telephones and computers and were ready for whatever PR they had. That was a mighty strange operation, to say the least, and certainly a fatal flaw, not to pun a word.

Let me ask you about something else that Mr. Bryant asked earlier of you and he didn't get a chance to finish. When you have a no-knock warrant, shouldn't that have been served by going to the door—I mean, if you didn't have a no-knock warrant. In this case you did not have a no-knock warrant, right?

Mr. EVANS. They did not have a no-knock warrant.

Mr. MCCOLLUM. Let's let you explain the difference. It has been a long time since we have been over that. What is the difference between a no-knock warrant and some other kind of warrant?

Mr. EVANS. Theoretically, it is supposed to mean that the officers, if they don't have specific authority to just kick the door down without announcing themselves, that they are supposed to knock on the door and announce themselves as police officers and go on in.

I will tell you, I have been doing this a long time and for 5 or 6 years I rode with the police. I have never seen a police agency that didn't scream "Police" on the way to the porch and kick the door before the words echoed off the front door. You know, they don't knock and announce. It just doesn't happen.

Now, there are a lot of exceptions to that where the police can say, well, even though we didn't have a no-knock warrant, this and that happened, and so, therefore, we had to go ahead and crash in. And the status of the law now is that there are so many exceptions and all the—not all, many, many restraints have been taken off of police officers and, quite frankly, we are frustrated. And that is why I am here, because there is little we can do about it.

Mr. MCCOLLUM. Well, isn't it true that at least theoretically under the law if you have a warrant that wasn't a no-knock warrant like the one in this case—and this was not a no-knock warrant, this was a regular old warrant—that the officer who had that in his possession should have been up there at the front lines, not back in the truck where, under the testimony we had yesterday, he testified, that it was shot full of holes, and destroyed on the seat of a vehicle. He never quite got it out of the vehicle before that happened.

Mr. EVANS. By the way, Agent Ballesteros admitted under oath at the trial that they never even practiced a no-knock peaceable

entry down in Fort Hood. And the team that went up to the rooftop that we see in the television, where, tragically, those people were killed, they said they couldn't have known what was happening at the front door. They were under orders to go through that window regardless.

Mr. MCCOLLUM. Well, I think that is an obvious thing from looking at the films.

Let me ask you this question. I am going to jump ahead of where we are because you are not going to be back with us. You have given us testimony talking about not a question of where the fire started but the knowledge of those who were involved earlier in the morning of the fire about the likelihood that the Davidians would start a fire. That comes from the tapes and the transcripts and the studies that you have done of all this as part of the work you have done in trial and the observations you have made. Could you describe that for us?

I think you said that they should have known this, and instead of backing off they pushed ahead. They should have known that morning that a fire was going to happen. Could you tell us about why you analyzed it?

Mr. EVANS. Mr. Chairman, it is not that they should have known. They knew. Let me tell you how I can make such a definitive statement. Those tapes show that at 6:05 in the morning, 6 hours before this fire ever broke out——

Mr. MCCOLLUM. The audiotapes?

Mr. EVANS. The audiotapes, I am sorry. The audiotapes of the electronic bugging that the FBI is monitoring with earphones to see what is going on in there say that, words like that, spread the fuel, give more fuel, spread it around here. That went on for about 20 minutes. And then sporadically throughout the morning, as the tanks pounded the place, more mention was of fire and spreading fuel. It is throughout there.

Now, I know what the FBI says about it because I saw Special Agent Jeffrey Jamar on a national TV show 2 weeks ago say, well, we had to enhance those tapes in order to hear them because we really didn't know that morning.

Mr. TAYLOR. Point of clarification, Mr. Chairman.

Mr. MCCOLLUM. Let him please finish, then we can clarify.

Mr. EVANS. I was in this room when Ray Jahn testified under oath to you folks 2 days ago. He was trying to show you that the Davidians started the fire, and he tried to show the jury in San Antonio that the Davidians started the fire the same way. And he testified very truthfully that he could hear those tapes unenhanced with his ears the first time he listened to them. Your record will show he told you that.

And it is true because I was in the courtroom in San Antonio when the tapes were played unenhanced, and the record shows that—and I have got the transcripts from the record with me if somebody wants to look at them—that you could hear that conversation unenhanced.

Now, true, it was garbled; true, you had to listen carefully; and, yes, you could—every now and then you couldn't distinguish words and you could argue about it. But if you take the sum total of it,

the whole morning for 6 hours and listened to all of it, you had to have known that somebody in there was going to start that fire.

So we have missed the issue. We have run down a rabbit trail if we try to decide who started the fire or who didn't start the fire. Let's just say the Davidians did start the fire. Our Government is held to a higher standard than those people in that compound, and they knew for 6 hours that continuing to pound that place and tear down the whole back side of it was going to cause something like this.

But, folks, they had been down there too long. It was going to be over. Listen to their PA announcements. David, it is over, come out. And it was going to be over, come hell, high water or holocaust, and what we got was a holocaust.

Mr. TAYLOR. Point of clarification.

Mr. MCCOLLUM. Thank you, Mr. Evans.

Mr. ZELIFF. Point of clarification.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. Evans did not make it clear. He said he knew for certain that someone was saying we are spreading fuel. Who? The Davidians? The FBI?

Mr. EVANS. The Davidians.

Mr. TAYLOR. The Davidians were spreading fuel amongst themselves, is that accurate?

Mr. EVANS. Yes, sir.

Mr. TAYLOR. OK, I just want that clear for the record, Mr. Evans.

Mr. EVANS. Yes, sir.

Mr. ZELIFF. Thank you very much.

Mr. BARR. Mr. Chairman, could I ask unanimous consent that the documents that Mr. Evans is referring to be introduced into the record along with his testimony?

Mr. ZELIFF. Without objection, so ordered.

Mr. WISE. Whoa, whoa, whoa, Mr. Chairman. That is the quickest—reserving the right to object——

Mr. ZELIFF. What is your objection?

Mr. WISE. I am just asking what the documents are. I may not object.

Mr. BARR. If Mr. Evans could identify them again. You were just referring to some transcripts.

Mr. EVANS. I prepared a written statement, and it has exhibits attached to it. I would like for that to be introduced since I don't have much time. But the thing that you are referring to is the trial transcripts about the testimony concerning those tapes.

Mr. BARR. Right.

Mr. EVANS. I will get them. I have them in my briefcase down here.

Mr. ZELIFF. All statements from the witnesses, any of you have any material that you want to supply, we will be happy to admit it.

[The prepared statement of Mr. Evans follows:]

## PREPARED STATEMENT OF TIM EVANS, ATTORNEY

Mr. Chairmen and members of the Committees:

Thank you for providing me this opportunity to testify on behalf of myself and the members of the National Association of Criminal Defense Lawyers (NACDL) on the matter of the raid on the Branch Davidians in Waco, Texas.

The almost 9,000 direct, and almost 30,000 state and local affiliated members of the National Association of Criminal Defense Lawyers are private defense lawyers, public defenders and law professors. They have devoted their lives to protecting the many provisions of the Bill of Rights concerned with fairness in the criminal justice system. NACDL's interest in, and special qualifications for understanding and helping to explain the excesses and misrepresentations of law enforcement concerning the raid and siege in Waco are keen. I am here to assist in the investigation and to focus on the grave constitutional questions raised by the conduct of law enforcement.

I have practiced criminal law for over 25 years. I have both prosecuted and defended persons accused of crimes. I have a wife, children and a new granddaughter who I hope can grow up in a peaceful community. My wife, Rita, worked for the Fort Worth Police Department for 19 years and we both respect the honest efforts of law enforcement.

I was honored to represent British citizen, Norman Allison, *pro bono*, against the government's allegations that he conspired to murder federal agents in Waco, Texas on February 28, 1993. The jury found him not guilty of all charges.

#### **I. WHY REVISIT THE WACO TRAGEDY?**

Because the whole truth did not come out in either the government reports or the first hurried hearings before Congress.

#### **II. WHAT LESSONS CAN WE LEARN FROM THE WACO TRAGEDY?**

Rather than teaching new lessons the events in Waco serve to reaffirm the lessons the framers of the Constitution knew very well. They knew then what we must not forget -- that there will always be people in law enforcement who are ambitious, who enjoy power and who will be willing to distort the truth to achieve their objectives or to hide from blame. The government actions in Waco are a case study in these human frailties. The Bill of Rights is our best protection against these frailties.

The events in Waco also teach us that we must be very careful when we wage war -- even a war on crime -- for there has never been a war without innocent victims. And when we wage war in our country the victims are our own.

### III. THE FRAUD.

Juries in federal courts across this land are routinely instructed that:

"a scheme to defraud includes any scheme to deprive another of ... honest services by means of false or fraudulent pretenses, representations or promises. A representation may be 'false' when it constitutes a half truth, or effectively conceals a material fact, provided it is made with intent to defraud". Pattern Jury Instructions, U. S. Fifth Circuit District Judges Association.

The following is a list of half-truths, misrepresentations and outright falsehoods perpetrated upon magistrates, supervisors, Congress and the public by officers ranking from line agents to the highest supervisors of the ATF and FBI.

#### A. The Affidavit for the Arrest and Search Warrant.

Others will speak to this issue but suffice it to say here that the warrant, although it might be sufficient on its face, is replete with stale information from persons with grievances against David Koresh and prejudicial assertions that fail to state any crime against federal gun laws.

#### B. The Need for a "Dynamic Entry" Assault.

The stated justification for this dangerous procedure was that David Koresh was becoming reclusive and rarely left the Mount Carmel Center. Yet, the ATF surveillance notes reflect that he left the compound on January 28, 1993 and witness Tommy Spangler testified Koresh was at his junk yard and parts store four days before the raid. No effort was made to arrest Koresh away from the center. Agents now give different reasons for not arresting Koresh alone, but when first asked they stated it was because he did not leave the center.

Former ATF Director Higgins is reported to have said that if Koresh was arrested away from the center the others could have started executing people. This is the wildest of inflammatory speculations, unsupported by any factual basis. It is an example of the rhetoric of rationalization that permeates the ATF's statements throughout the proceedings. It is doubtful that arresting Koresh away from the center was ever thoughtfully considered.



In the summer of 1992 Koresh, through gun dealer Henry McMahon invited ATF Agent Aguilera to come to Mount Carmel to inspect his guns. Additionally, other agencies had been allowed into Mount Carmel without incident and the county sheriff evidently had a good rapport with Koresh. In spite of this, no options other than raid or siege were seriously considered.

**C. The Phantom Methamphetamine Lab.**

Whether or not, and under what circumstances the ATF needed to show a nexus of drug violations to obtain military assistance is subject to legal analysis. But one fact is perfectly clear. The ATF believed it needed to show a drug connection. This can be shown by statements made not only to the military, the press, and the governor of Texas, but also in testimony before this Congress. Deputy Director Dan Hartnett stated in a letter to Governor Richards and to Congress in June, 1993 that there were a number of people inside the compound with drug trafficking and possession convictions. This was a fraudulent representation because it contained half-truths and omitted material facts.

Pursuant to court order, the government prosecutors provided what they stated was the information actually possessed by the ATF to support their claims. The letter is attached as Exhibit A. This letter reveals that the ATF ran "name only" checks through drug intelligence computers. That means no other identifying information like age, date of birth, race or gender was included. It would be like asking if "John Smith" had a drug record. Even the rookie cop on the beat knows this is a very unreliable way to check criminal history. A trained federal agent obtained and forwarded such spurious information with the intent to influence a high official to rely on it and take action. The agent omitted the clearly material information that they could not be sure if the persons named were the same persons at Mount Carmel. In fact, to the contrary, they claimed that the persons named were indeed the Mount Carmel residents. This conduct fits the definition of fraud. People who gave similar misleading information to savings and loans are now in prison.

Further, deputy director Hartnett claimed the ATF had information from people inside the compound they had seen a meth lab. What he omitted was that this information dealt with an incident reported to have occurred four years earlier where Koresh had said he had found lab equipment and intended to turn it over to the Sheriff.

The source had not seen a meth lab.

The fact that the FLIR camera detected a hot spot at the center on a cold February, 1993, night in the area known by then to be the Chapel where religious meetings were conducted could not have been a good faith claim that there was actually a meth lab in operation. This hot spot could be anything -- a collection of warm bodies, electronic amplifiers, or a space heater. Trained agents know this, but they deleted this fact to achieve their purposes. Whether or not the ATF needed to make these claims, they were willing to do so to get what they wanted -- military helicopters.

**D. The Element of Surprise.**

The truth appears to be that the ATF did not care if they had the element of surprise or not. Their macho attitude was they could force their way through any problem which might arise. When the tragic results proved this assumption wrong they began to tell the press, the public and higher supervisors that they, of course, relied on the element of surprise, but were unaware they had lost it. This was an outright lie. It might have gone forever undiscovered had the line agents not been upset over the loss of their comrades. Further, Agent Rodriguez was beginning to be criticized for not informing the others of the loss of surprise. In a rare display of division of the ranks, it was soon revealed that Agent Rodriguez had in fact told his supervisor, Chuck Sarabyn, that "they know we're coming". Several agents testified under oath at the trial that they heard Sarabyn announce to the assembly of raid agents that, "they know we're coming, hurry up and get your gear on."

**E. The False Affidavit that Delroy Nash (Norman Allison) Fired at Agents.**

At the detention hearing held before U. S. Magistrate Dennis G. Green an affidavit sworn to by ATF Agent Charles Meyer was presented to Magistrate Green. This was done for the purpose of convincing the court to hold Norman Allison (who had first given the name Delroy Nash) in jail without bail pending the trial. My request to produce Agent Meyer so I could cross examine him on this issue was denied. The affidavit is attached as Exhibit B. It states, in pertinent part, that "as affiant and other agents took cover, Nash and the others began firing firearms at the agents." In truth, court testimony revealed that not one agent ever saw Allison (Nash) fire a single shot. In fact the testimony was that when Allison surrendered the .22 caliber pistol he had, it was in

a leather pouch. ATF Agent Marvin Richardson had recovered the gun, smelled no powder, saw no powder and was of the opinion at the scene that it had not been fired. This information was contained in a statement, (Exhibit C), given to the Texas Rangers by Agent Richardson on March 5, 1993 some five months before Allison's detention hearing in August, 1993. Not only was this sharply contradictory evidence withheld from the magistrate, it was not until the weekend before the trial in January, 1994, that this clearly exculpatory information was given to me as Allison's attorney. By this time Allison had been in jail for almost a year. The prosecution who is supposed to be bound by the Constitution and was bound by specific court order of U. S. Judge Smith to immediately turn over such information had delayed it for 10 months until the eve of trial.

**F. The Claim that the Fire was Unexpected.**

In order to absolve themselves of any responsibility for the horrific scene on the television screens of the nation when 76 men, women, children and two unborn fetuses were burned to death, the FBI has taken various positions. Some, even the President, attempt to divert blame by vilification of Koresh. They claim Koresh killed the children and Koresh is compared to Charles Manson. "They" committed suicide, we are told, even though little is known about the individual action or intent of the separate souls who perished.

The FBI tells us they did not know there was going to be a fire or they would have had emergency vehicles standing by. However, they further concede that fire trucks were not allowed in when they arrived because of a fear they would be fired upon. This matter of the fire trucks is a red herring because the real issue should be: could the fire have been prevented?; not whether it could be extinguished after it started. It is highly unlikely that fire trucks could have saved lives in that wind whipped tender box even if they had been in the front yard when the fire erupted.

The fraud is revealed when the tapes of both the negotiation and the electronic eavesdropping are examined. These tapes and transcripts are voluminous but a fair summary reveals inescapable conclusions that should not evade even the casual observer, much less the trained "elite" of law enforcement.

First, it is clear that the Davidians are not crooks or con artists. They were ardent and true believers in their interpretation of the Bible. They spoke of the scripture throughout the siege. Second, it is equally clear that they were obsessed with the "end days" and they believed that the apocalypse was upon them. They spoke often of death and many times of death by fire. This talk of death by fire is very apparent in the tapes recorded and monitored the day before the fire.

Most significantly, at 6:00 A.M., on April 19, 1993, the day of the fire, FBI negotiator Byron Sage informs the occupants by telephone that the gassing will start. At 6:05 and continuously for the next fifteen minutes, various Davidians talk about pouring and spreading fuel. (Transcripts of the first conversations are attached, Exhibit D) More sporadic conversations about fire and fuel occur throughout the morning. The prosecution introduced these tapes at trial to try to prove to the jury that the Davidians started the fire. In the process they succeeded in proving that the FBI knew of the likelihood of a holocaust in that wooden building for six hours before the fire broke out. Incredibly, instead of backing off they pushed forward, even more aggressively. Agents had also been asked about the possibility of suicide at that morning's news briefing. An agent claimed that they thought this was the best way to prevent a suicide pact from taking place. This was said while the Davidians had been talking about pouring fuel off and on for over three hours.

As recently as July 5, 1995, Special Agent in Charge Jeffrey Jamar continued the misrepresentations to avoid blame for callously pushing the Davidians toward the fire that consumed them. When confronted on Nightline by ABC's Ted Koppel with recordings of the Davidians talking about starting a fire, SAC Jamar claimed that the FBI could not hear the conversations that morning and that the tapes had to be enhanced at a later date. The trouble with this latest story is that the prosecution played the original, unenhanced version of the tapes to the jury at trial and even a lay person could hear that the Davidians were talking about spreading fuel and mentioning fire. It is incredulous to believe that a trained agent, with headphones, whose sole job was to monitor the activities of the Davidians that morning could not or did not hear what we all heard in that courtroom.

Agent Matt Gravel was one of the monitors and he testified that he was not told about the tear gas until about 7:00 A.M. That still gave him five hours to report the conversations about the fire. His notes of these conversations have not been produced.

An agent who drove one of the CS gas armored vehicles admitted at trial that they first gassed the area of the underground bus to prevent the Davidians from getting to it. They also pushed the walls in where the trap door to the bus was located. Six women perished at the obstructed doorway to that underground exit.

It is inescapable that regardless of what they might have told their supervisors, the Attorney General, or the President, the FBI agents had decided that the siege was over-come hell, high water or holocaust. This is apparent as one listens to the tone of the FBI on the tapes becoming increasingly belligerent while continuing to assure the residents that the destruction

they were observing was "not an assault".

It is graphically depicted in the escalating destruction of the outer walls. Much of the backside, away from media cameras, is destroyed. FBI spokespersons at a news conference at midmorning had the audacity to claim that the tanks were merely opening holes to insert the gas. Later they were to claim that the destruction was to allow greater access to exit. Never mind that one would risk being crushed by debris trying to leave.

Finally, there is the disturbing photo of Agent Sage posing for the camera as the Mount Carmel Center rages in flames. (Exhibit E). SAC Jamar said on Nightline that it was unfair to interpret this "chance" photo in a bad light. What SAC Jamar was not shown on Nightline was the second photo of a second agent posing in exactly the same spot in an even more macho pose. (Exhibit F) I will not interpret these pictures, they are worth a thousand words.

#### IV. THE RAID.

The raid was a recipe for disaster from the beginning. Even a cursory understanding of the Davidian beliefs would make a military assault the last option. While it is true that religious beliefs do not justify law violations, neither should they carry the death penalty. While some in the ATF may have considered other options we know that the majority favored the "dynamic entry". As we have seen, a clever police officer can rationalize almost anything, but the obvious answer is that they opted for a raid because they could, and because they enjoy it. Librarians rarely volunteer for SWAT teams. Sure, it can be dangerous but so is skydiving. The personality traits that make a good SWAT team officer are not likely to favor passive alternatives.

##### A. The Raid Mentality.

In testimony at a pre-trial hearing, Agent Ballasteros admitted that in their Fort Hood training they never even practiced making a peaceful entry. An agent on the roof top entry team testified at trial that they couldn't see or hear what was happening at the front door and their plans were to break into the second story window regardless.

Agent Littleton's statement to the Texas Rangers reveals that he thought it was "no big deal" that they had lost the element of surprise because he had run a lot of warrants where they had lost the element of surprise.

When asked about the degree of force used, Agent Petrilli testified he thought they had not used enough force. Public Relations Agent Sharon Wheeler told the media shortly after the raid that the problem was "we were outgunned". Even a prosecutor argued to

the jury that if anything, not enough force was used. Some people just never seem to get it.

**B. Who Fired the First Shot(s)?**

For a variety of reasons, we are unlikely to ever learn the answer to the question of who fired the first shot. There are several indications that it may well have been the ATF.

**The Dogs**

An ATF team was assigned to "neutralize" the dogs. Team members deny shooting the dogs and claim they were going to use a fire extinguisher to scare off the dogs. However, no less than four agents told the Texas Rangers that when they heard the first shots, they presumed it was the dog team killing the dogs. Five dogs were killed. They were at a level below the firing lines of the shootout. It is unlikely the Davidians shot their own dogs.

Further, Kathy Schroeder, a Davidian called by the government as a witness, testified that the first shots she heard were outside the building and right after she heard them she heard the dogs yelping. The government relied on and sponsored her testimony regarding which defendants had guns during the standoff. Why would they not be willing to believe her concerning the shooting of the dogs?

**The Bullet Holes in the Second ATF Truck**

The second ATF truck, pulling the second cattle trailer stopped behind the first cattle trailer and parallel to the Mount Carmel building. There is a bullet hole in the front of the hood and a second hole, immediately behind the first, that goes through a bracket and into the radiator. When the hood is closed, these holes match up and were surely caused by the same bullet. A wooden dowel was placed in these holes and it points straight out the front of the truck at the first cattle trailer. (Exhibit G) It is unlikely that a Davidian was shooting from the first cattle trailer, it is more likely that an agent accidentally discharged their weapon. No one has admitted that they did, but not all agents testified, and their track record for credibility in this case is poor.

### The Missing Door

There were two matching metal front doors. Koresh was standing at these doors before the shooting started. Only the door with the bullet holes indicating shots coming out of the Mount Carmel Center was recovered, according to the government. Where is the other door? The government claims they cannot explain the whereabouts of the door except that it must have burned up in the fire. The door that was recovered was evidently pulled out with debris when a tear gas tank withdrew from the building. This story is debunked by the fact that other metal doors within the center survived the fire. In fact, tin cans of food and other small containers survived in the hottest areas of the fire. It is inconceivable that this door completely vaporized in the fire.

### The Missing Photographs

The ATF had cameras with high powered lenses set up in the undercover house for weeks prior to and on the morning of the raid. This house faces the front of the Mount Carmel Center. There were ATF cameras all over the place that morning. Many agents carried personal cameras, three people in the helicopters had video cameras. However not one ATF photo or video has been produced of any portion of the raid or ensuing standoff. Agents testified that the cameras at the undercover house were supposed to take pictures that morning. When the defense asked for these photos we were told there were none and the only explanation given was that the cameras must have malfunctioned.

### **C. No Written Reports Were Made by the ATF Agents at the Scene.**

Ordinary and routine police procedures require that at least one, and often more than one officer make a written report of any important incident in which they are involved. Even the rookie traffic cop writes a report if he or she investigates a traffic accident. This is especially true when an officer even discharges a weapon, much less shoots someone. In contravention of the most basic police practice, not one of the ATF agents involved in the shootings on February 28th made a written report of their observations or conduct.

Instead, these agents were allowed to and did talk amongst themselves for days before they were required to give statements to the Texas Rangers. By this time these agents knew that they were under intense scrutiny by the national press and by their own higher level supervisors in Washington. They were also understandably upset over the loss of their comrades. The potential for collusion is immense. When coupled with all other facts collusion is a virtual certainty.

In this most unreliable state the agents were finally asked what happened and allowed to give narrative recorded statements to the Rangers.

Every Ranger and most of the ATF agents who were asked, agreed that it was not normal procedure to fail to make written reports of such an event. Ranger Captain David Byrnes, when asked if he thought the ATF had made written reports of the shootings, replied, "I assume they did, and I would bet my life that my people did." His assumption, though understandable, was wrong.

Several Rangers also agreed that a basic investigation technique is to separate witnesses to an event and not let them meet and compare stories. In fact, just the opposite was done by the ATF.

This fact alone casts grave doubt on the reliability of the ATF version of these events. Additionally, several of the agents, most notably Agents Ballasteros and Meyers, added incriminating information against the Davidians to their original statements months after the first statements were taken.

All these facts taken together renders the testimony of the ATF, some of which would be otherwise compelling, of little or no value.

#### **D. Showtime.**

Trial testimony revealed that the code word to launch the raid was "showtime". The next words were "goggles down, weapons out, fingers off the trigger". Two separate public relations agents, Sharon Wheeler from Dallas and Franseska Perot from Houston were assigned to the operation. Pre-raid video from the "command" headquarters shows a prepared public relations center with fax machines, telephones and computers. It is very likely that



a substantial part of the press release had been prepared before the raid. Congress should ask to see it.

It is inescapable that this raid was to be a media event. It is also true that budget hearings for the agency were set in two weeks.

The trial judge would not allow us to delve into these matters at trial but they should not be ignored. The conclusions are obvious.

## V. THE "SECOND SHOOTING".

The term "second shooting" has come to refer to the shooting of Michael Schroeder in a field behind the Mount Carmel Center at about 5:00 P.M., after the raid and standoff.

We are left with only the ATF version of this shooting because Schroeder was killed and the two other persons in the field, Norman Allison and Woodrow Kendrick could not see enough of what happened to provide details. We are told that Schroeder refused requests to surrender and began firing at the agents. Approximately eleven agents returned fire and Schroeder was killed. Again, no written reports were made by the individual agents involved.

When questioned several days later, they told the Rangers that they had been shooting at Schroeder with pistols from a distance of about 100 yards. He had fallen, appeared wounded or dead, and they left him there without going near him. His body was left in the field for five days before Rangers were allowed to investigate the scene.

Photos of the body in the field show he was wearing a blue stocking cap. Autopsy reports show several gunshot wounds including two entry wounds in the side of the head. These holes are about two inches apart. Pretty good shots from 100 yards. Strangely the stocking cap came up missing. The medical examiner had all the other clothes, but not the stocking cap.

The Rangers requested permission from the FBI to return to the field to take plaster footprints. This would have shown if all the prints around Schroeder's body were his. Permission was reportedly denied for 10 days. In the interim heavy rains destroyed the footprint evidence.

Some claim has been made that Schroeder's body lay in the field and the Rangers were denied the right to return for "security and safety reasons". This is yet another weak excuse. The fact is this area is well out of sight and line of fire from the Mount Carmel Center. Armored personnel carriers were available during this time and could easily have been used to ferry Rangers to this remote sight. Plenty of personnel were available to provide security.

## **VI. THE PARAMILITARY POLICE FORCE.**

The scenes at Waco look more like Bosnia or some third world dictatorship than the United States of America. Civilian peace officers in full military gear. Tanks. Helicopters. Camouflage. Snipers. Even the command structure and the terminology was right out of the military manual.

These scenes are not limited to Waco. The nightly news across America in cities and villages alike shows these Ninja suited attack squads complete with Kevlar helmets and assault weapons riding the streets of our communities. I thought I would never live to see a civilian peace officer in the United States of America standing with assault weapons atop a military tank in full battle gear. The photo is attached as Exhibit H.

Among the many tragic scenes displayed from Waco there was no more chilling or revolting sight than that image displayed on the front pages of many of our newspapers the morning after the fire. It was that telling photograph of the ATF flag flying on the Davidian flagpole, callously waving above the smoldering remains of fellow human beings born and yet to be born. A "victory" sure enough, but a shameful victory in the war on crime.

Someone must start to realize what we have created and begin to take measures to reverse this dangerous trend.

## **CONCLUSION**

The actions of law enforcement before, during and after the tragedy at Waco cannot logically be assumed to be an isolated aberration. The disease of fraud, deceit and arrogance displayed by so many throughout this affair could not have inflicted them overnight. The extent of this disease is not known but its potential is dangerous indeed. It is not peculiar to any one branch of law enforcement. It infects the ranks of honest and dedicated officers throughout the land. It grows in the petri dish of permissiveness and is fed in the frenzy of the "War on Crime".

Congress, and all legislatures, should realize that there is a huge and powerful lobby constantly asking for more power, more money and fewer restrictions. It is the lobby of law enforcement. It ranges from the constant pressure of the Department of Justice to the demands of myriad local police organizations. We must begin to scrutinize their requests.

We must return to a healthy and meaningful system of checks and balances in the enforcement of our criminal laws. It should never be "easy" to convict another citizen. When it becomes easy to convict "them", it will become easy to convict "us".

It is checks and balances that keep us free; not studies, commissions, training or counseling. We must stop equating individual protections with "criminal's rights". We must avoid the reckless rhetoric that equates the Bill of Rights to "legal technicalities".

Specifically, we must return to the protections of the Fourth Amendment. A healthy exclusionary rule protects the innocent and the free, not the "criminal". Can one imagine what the agents, who would twist the truth to obtain probable cause, would do if they no longer needed probable cause to arrest and search and siege.

We must allow meaningful discovery to those accused of crime. If they are guilty they will still be convicted, if they are not guilty, they will have the means to disclose the unreliability of the government's case. Under the present rules of discovery the Davidian defendants, who were facing life without parole, were entitled to but a small portion of the documents Congress has accumulated for these hearings. The only reports or statements of government witnesses which we received were of those who the government chose to call as witnesses. By limiting their witnesses, they limit the information they have to disclose.

Congress should even the playing field by appointing a committee, not dominated by the Department of Justice, to recommend fair discovery in criminal cases.

We must revive the presumption of innocence in this country. It may not be dead but it has certainly been in a coma for over a decade. We should restrict the practice of holding presumptively innocent citizens in jail while they await their trial to the most compelling of circumstances. It is much too easy for the government to present conclusory hearsay evidence at these detention hearings. In this case alone, three innocent people lost a year of their lives in jail because of this Orwellian practice.

In short, the events of Waco call not merely for a re-examination of law enforcement but for a fundamental realization that they are not always right and they do not always tell the truth. Congress should therefore re-examine its propensity to grant carte blanche requests from the Department of Justice for more power, fewer restrictions and broader criminal statutes. **The last thing this country needs is a federal police force!**



U.S. Department of Justice

United States Attorney's Office  
Western District of TexasP.O. Box 828  
Waco, Texas 76703

(817) 757-6245

January 6, 1994

RE: US v. Branch, et al

TO COUNSEL FOR ALL DEFENDANTS:

In response to the Court's order filed January 4, 1994, we provide the following information which ATF possessed prior to the February 28th raid concerning the existence of a drug lab at Mt. Carmel:

Name checks through the Treasury Enforcement Computer System were performed by the Houston Field Division Office of ATF on or before December 16, 1992. The results, based on name only searches indicated that four persons believed to be living in the Compound had drug smuggling or possession entries in the Treasury Computer System. The accuracy of these checks is somewhat questionable because of the "name only" type inquiry, without having other identifying data on the queried individual.

During November of 1992, Special Agent Aguilera spoke with a former resident of the Mt. Carmel Center who told Aguilera that Vernon Howell had told this former member that when he (Howell) and others had taken possession of the Mt. Carmel Compound in 1988, there was an amphetamine manufacturing facility which Vernon referred to as an amphetamine still on the property. Vernon Howell also related to this former member that he (Howell) found a number of documents regarding the manufacture of amphetamine, including recipes and instructions. Vernon Howell related to this former resident that he (Howell) intended to turn these materials over to the McLennan County Sheriff's Office. Agent Aguilera personally checked with members of the McLennan County Sheriff's Office and learned that at no time since 1988 did Vernon Howell or others at the Mt. Carmel Center relinquish possession of any components of a amphetamine laboratory nor did they turn over any instructions or recipes relating to a lab.

Based upon the above information, ATF coordinated a surveillance flight using a helicopter with infrared capabilities. This flight took place on February 6, 1993. A National Guard Analyst reviewed


EXHIBIT A

the data and concluded that a large amount of heat, consistent with that produced by a drug laboratory was emanating from an area of the Mt. Carmel Center at 1:45 a.m. on February 6, 1993. A photocopy of a portion of the aerial photograph with the analyst writing showing areas of heat is attached to this letter.

Sincerely,

JAMES H. DEATLEY  
UNITED STATES ATTORNEY


by:

  
William W. Johnston  
Assistant U.S. Attorney  
Western District of Texas

AFFIDAVIT

On February 28, 1993, your Affiant, Bureau of Alcohol, Tobacco and Firearms (ATF) Special Agent Charles Meyer was working with other ATF Agents providing perimeter security while a federal search warrant was being executed at the residence of VERNON WAYNE HOWELL, off of Double EE Ranch Road in McLennan County, Texas. Your Affiant has been a Special Agent with ATF since 1976.

Other Agents had been fired on and several were killed and wounded. At approximately 5:00 p.m., which was near dusk, Affiant and several other ATF Special Agents encountered Defendant DELROY NASH and two other males. Affiant and other ATF Special Agents identified themselves as Federal Agents several times and ordered the three individuals not to move. As Affiant and other agents took cover, NASH and the others began firing firearms at the Agents. Affiant and other Special Agents returned fire and hit one of the individuals. When the firing ceased, NASH yelled and was ordered to stand up with his hands on his head and walk toward Affiant and Special Agents. He did and was apprehended. NASH was searched and had 99 round of .22 caliber ammunition and a Jennings .22 caliber pistol on his person.

  
 Charles Meyer, Special Agent  
 Bureau of Alcohol, Tobacco and Firearms

SUBSCRIBED AND SWORN TO before me on this the 1<sup>st</sup> day of March, 1993.

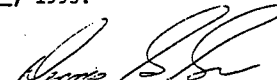
  
 United States Magistrate Judge



EXHIBIT B

STATEMENT OF: MARVIN G. RICHARDSON  
 DATE: March 5, 1993  
 INTERVIEWER: John Aycock

reach for them, so about that time, I counted three and fired off like maybe six rounds and told Ivan to go and I fired off six rounds and then all I remember then is just, just a whole bunch of shots ringing out at that point in time. We were all, uh, just returning fire. Uh, I know I shot, I went through two clips and had put my third one in and started firing and about that time, the uh, the guy started yelling from down in the, in the little ravine, he was yelling, you know, surrender, surrender. And we stopped firing and the guy was given instructions. Uh, Special Agent Mihalec was instructing the guy to come up toward him. So he starts working his way up the hill with his hands up. He gets about six feet from Mark and we put him on his knees. He gets on his knees. Mark tells him to work his way on up toward him on his knees. Gets him there, asks him if he has a gun. He says, yeah, I got a gun. He points to his pocket and Mark reached into his pocket while I was covering the suspect. He grabbed the gun and he threw the gun toward me and I grabbed the gun and stashed it in a bag with the rifle that we had taken. We took that rifle that I told you about earlier, back at the bus. Yeah, I had that bag, had it in a bag, the rifle and the gun which we took off of the suspect. Mark cuffed him and took him to the front of the line. At that time, I proceeded last man to the front of the line and we were going to leap frog out. So, when I got to the front of the line, the last people started working their way up and we started heading out again. Uh, . . .

- Q. The male that you guys had captured, what was he?
- A. I want to say he was a Jamaican because I could catch his accent when he was talking to, when he was talking to Special Agent Mihalec, and it was pretty easy . . .
- Q. A black male?
- A. Yeah, black male, uh. . . .
- Q. And what kind of gun did he have?
- A. He had a Jennings 22, little chrome-plated 22 and a homemade leather pouch which, you know, it had not been fired because I cleared the weapon when we got back after everything was over with and it had not been fired, uh, to the best of my knowledge and then all I did was clear it. It had six rounds in it, one was in the chamber. I didn't observe any powder or anything like that. I didn't get to look it over as well as

EXHIBIT C

TRANSCRIPT OF "BUGGED" CONVERSATIONS THE MORNING OF THE FIRE

89B-SA-38851  
 SA 73-2  
 DAY 2  
 DATE 4/19/93

KORESH - DAVID KORESH  
 S - STEPHEN SCHNEIDER  
 S/A SAGE - BYRON SAGE  
 UM - UNKNOWN MALE  
 UM (S) - UNKNOWN MALE (POSSIBLY STEPHEN SCHNEIDER)  
 UF - UNKNOWN FEMALE  
 C - CHILD  
 UI - UNINTELLIGIBLE

Time

0556 (telephone ringing)

UM: Hello...hello

S/A SAGE: Hello, is Steven there?

UM: I can hardly hear you

S/A SAGE: Is (ui) there?

UM: Uh, no he's asleep right now

S/A SAGE: Wake him up...this is Byron Sage, it's a very important call.

UM: Ah...no sir, he asked not to be bothered now. He really had a very (ui) day..(long pause)...I'm gonna go check again, ok? Hold on (ui).

(pause, background noises, whistling sound, tanks moving)

(UI conversation)

0600 UM (S): Hello, yes, I can hardly hear you

S/A SAGE: Hear now?

UM: very weakly

S/A SAGE: Ok, this is Byron Sage. I'm going to advise you of something that's very important.

UM: Ok...I'm glad I can hear you

EXHIBIT D



89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

S/A SAGE: Ok, we're in the process of putting in tear gas into the building. This is not an assault. We are not entering the building, not an assault.

S: You are going to spray tear gas into the building.

S/A SAGE: In the building...we are not entering the building. This is not an assault.

UM: Tear gas (ui).

S/A SAGE: Don not fire your weapons. If you fire, fire will be returned.

UM (S): Everybody grab your masks, everybody grab your masks.

(sound of shuffling around; popping/clicking noises - possibly the sound of rounds being chambered into weapons)

(UI conversation)

S/A SAGE: (ui) inside the Branch Davidian compound. We are in the process of spraying tear gas into the building. This is not an assault. This is not an assault. We will not be entering the building; this is not an assault; do not under any circumstances discharge the weapons. If you fire, fire will be returned. Do not shoot, this is not an assault.

UM: you all up

UM: (ui) tear gas in the building.

S/A SAGE: It's a non-lethal...(ui) it will temporarily render the building uninhabitable. Exit the compound now and follow instructions. (ui) You are not to have anyone in the tower. The tower is off limits. No one is (ui) the tower.

UM: (ui) shootin' at him.

89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

B: The tower...

0601 UM (S): Everybody wake up...let's start to pray (ui)

S/A SAGE: Dealt with accordingly, come out now - you will not be harmed, follow all instructions, come out of the compound with your hands up - carrying nothing. Come out of the compound with your hands up, carrying nothing. Come out of the building and walk up the driveway toward Double Ranch Road. Walk toward the large red cross flag. Follow all instructions of the FBI Agents in the Bradley vehicles.

(clicking sounds - possibly loading a weapon)

S/A SAGE: Follow all instructions, you are under arrest. This standoff is over. We do not want anyone hurt.

UM: Where's Steve? Steve down here?

UM: (ui)

S/A SAGE: Follow all instructions.

UM: We have to make out (ui).

S/A SAGE: Do not, do not fire any weapons. We do not want anyone hurt.

UM: (ui) the phone.

S/A SAGE: The gas will continue to be delivered until everyone is safely out of the building.

UN: Get any (ui)?

UM: Yeah.

S/A SAGE: Exit the compound now. (ui) Those of you remaining inside the Branch Davidian complex (ui) proper authorities. We do not want anyone (ui). Follow all instructions. This is not an assault

0605

89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

UM: What number you got on 'em?

S/A SAGE: Do not discharge any weapons.

UM: (ui)

S/A SAGE: The gas will continue to be delivered until everyone is out of the building.

UM: (ui) bad (ui).

S/A SAGE: Exit the compound now. You are advised there is to be no one in tower, the tower is off limits. Be advised that the tower is off limits. No one is to be in the tower. Anyone observed in the tower will be considered to be an act of aggression and will be dealt with accordingly.

(Thumping sound)

UM: Am I gonna hear him?

UM: let me do that

(UI conversation)

UM: Come on.

UM: (ui) you can't get a (ui).

UM: One? Right here.

UM: You want it poured?

(thumping sound)

S/A SAGE: (ui) the tower is off limits, no one is to be in the tower. If you are observed in the tower (ui). Come out now and you will not be harmed.

UM: (ui)

S/A SAGE: carrying nothing. Come out of the building and walk up to (ui)

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SA 73-2  
DAY 2  
DATE 4/19/93

UM: They're hitting the building. Whoa

S/A SAGE: Follow all instructions (ui) Bradley. Follow all instructions. You are under arrest. We do not want anyone hurt. Follow all instructions.

UM: Pablo, have you poured it yet?

UM: Huh?

UM: Have you poured it yet?

UM: In the hallway.

UM: Things are poured. Right? (ui)

S/A SAGE: Do not, do not fire any weapons.

UM: Need to get the fuel out.

S/A SAGE: We do not want anyone hurt.

UM: Do you want me to pour it already?

UM: We want the fuel.

S/A SAGE: The gas will continue to be delivered until all...

UM: You want some here?

S/A SAGE: Are out of the building. Come out now.

UF: I need a gas mask.

CHILKORESH: I need a gas mask.

UM: Got any fuel?

UM: We need fuel.

UM: Fuel, over here.

UM: Is that (ui)?

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UN: Fuel.  
 (sound of tanks)

0610 KORESH: You got a mask up here?

UM: (ui) there are no more.

UM: You need to stop the tear gas.

UM: Okay Pablo.  
 (popping sounds)

UM: Don't pour it all out, we might need some later.

UM: (ui) throw the tear gas back out.

UM: Tear gas (ui).

UM: Big bang?

UM: Don't fire (ui).

S/A SAGE: (ui) tear gas will be (ui) at this time (ui) the building (ui) fire, you will be fired on. This is not an assault. The gas you will smell is non-lethal tear gas. (ui) Exit the compound now. Exit the compound now and follow instructions. You are not to have anyone in the tower. No one is to be allowed in the tower. Anyone in the tower is considered to be an act of aggression.

UM: Can we put out the lights?

UM: No

UM: Did somebody ask?

S/A SAGE: If you come out now you will not be harmed. Follow all instructions. Come out with your hands up, carrying nothing.

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UM: They're comin' in, they're breaking the building down.

UF: Would you get (ui) gas mask?

UM: (ui)

UM: (ui) baking it.

S/A SAGE: You are under arrest.

UM: (ui) as long as I can.

S/A SAGE: We don't want anyone hurt.

UM: They're punching walls in.

S/A SAGE: No one in the (ui).

UM: (ui), hey, hey.

S/A SAGE: This is not an assault. Do not fire any weapons. Do not fire any weapons. We do not want anyone hurt.

UM: (ui)

S/A SAGE: The gas will continue to be delivered until everyone is out of the building.

UM: (ui) fuel, be careful with it.

S/A SAGE: Exit the compound now.

UM: (ui) what kind of a (ui)?

UF: (ui).

KORESH: Is there another gas mask somewhere?

UM: I don't know.

0612 KORESH: Go get another mask.

(popping sounds)

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KORESH: You got to get the fuel ready.

UM: I already poured it. It's already poured.  
(popping sounds)

UM: (ui)

UM: You got the (ui)?

UM: Okay.

UM: Huh?  
(popping sounds)

UM: Oh.

UM: What's the problem?

UM: You want to (ui) more people.

UM: They're gonna kill us.

UM: They don't want to kill us.

UM: What?

0614 KORESH: I'm going back upstairs.

UM: Go on up to your hard (ui)  
(possible gunfire in background)  
(UI conversation)

0616 UM/UF I don't know.

UM: He's pretty decent.

UM: He is decent.

UM: Anybody have any other masks?

UM: David took a few of them.

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UM: (ui)  
(popping sounds)  
UM: (ui)  
UM: If you face (ui), man.  
UM: All the kids, all the kids, all the kids are  
down in the (ui).  
UM: Okay, if you face (ui), man.  
UM: What you doin' now?  
UM: Don't move around (ui) get ready, don't let  
anybody come in.  
UM: Nobody comes in, huh?  
UM: Nobody (ui).  
UM: Right,  
UM: They got some fuel around in here?  
UM: Yeah, they even poured already.  
UM: Poured it already.  
UM: He's got it poured already.  
UM: You don't want to talk on the phone anymore,  
huh?  
S: He might be on the phone right now.  
UM: No.  
0617 S: They come close to it.  
S: Hello.  
S/A SAGE: (ui) do not, I repeat, do not, (ui), do not,  
not an assault, don't fire your weapons,  
don't fire your weapons. If you fire, fire



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will be returned. Do not, do not fire. We don't (ui) non-lethal tear gas. (ui) are temporarily rendered uninhabitable. Exit the compound now and follow instructions. You are not to have anyone in the tower. The tower is off limits. No one is to be in the tower. If anyone is observed in the tower it will be an act of aggression and will be dealt with accordingly. If you come out now you will not be harmed. Follow all instructions. Come out with your hands up. Turn right. Come out of the building and walk up the driveway toward Double Ranch Road. Walk toward the large Red Cross flag. Follow all instructions. (ui) I repeat follow all instructions. You are under arrest.

S: (ui) line is dead.

UM: (ui) in the office right here?

0619 UM: Hmm?

UM: (ui) ... start the fire?

UM: We have a (ui) goin' in?

S/A SAGE: Follow all instructions. This is not an assault. Do not fire your weapons. Do not fire weapons. We do not want anyone to be hurt. The gas will be delivered until everyone is out of the building. Exit the compound now. The (ui) proper authorities. David, we are attempting to contact you via the telephone, attempt to initiate contact telephonically with the negotiators. If you cannot do that, if you cannot do that, the lines have been cut, indicate with a flag out the front door. Once again do not, do not send anyone in the tower. The tower is off limits. No one is to be in the tower. Send a flag out the front door and indicate if the phone line is no longer working or (ui) you have intentions to contact us (ui) tell us you are initiating telephonic contact. Once again this is not an assault.

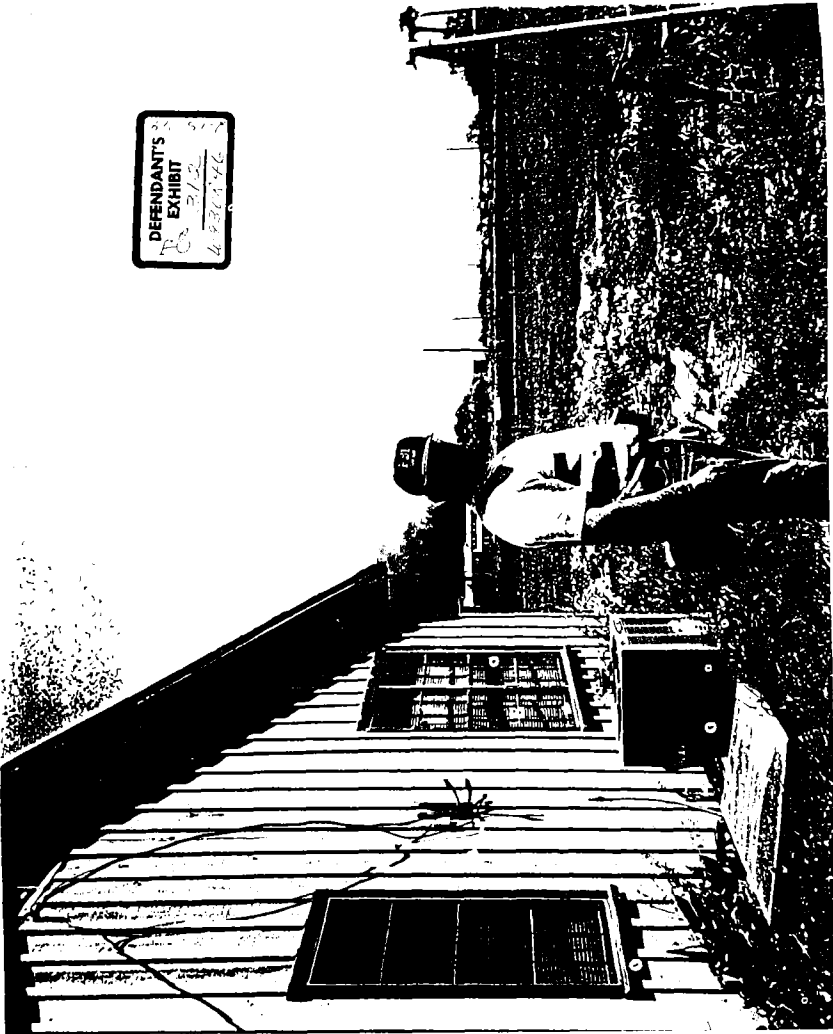


EXHIBIT E



EXHIBIT F



EXHIBIT G



EXHIBIT H

Mr. BARR. Additionally, Mr. Chairman, if I could ask unanimous consent—I don't think I have done this yet. The documents that I have introduced 2 days ago certainly will be in. The ones that are blown up here, I would ask for those to be entered into the record as well as the two Merit System Protection Board settlement agreements that we have referred to. I don't think I moved specifically to have those placed in the record.

Mr. SCOTT. Reserving the right to object.

Mr. ZELIFF. State your objection.

Mr. SCOTT. The gentleman means copies of the posters, not the posters themselves?

Mr. BARR. It would be a mighty big book, I suppose.

Mr. WISE. Actually, Mr. Chairman, I had a reservation, too. I don't suppose the gentleman would like to ask Mr. Evans to put in the rest of his file on this case, would you?

Mr. EVANS. You've got it.

Mr. MCCOLLUM. May I ask a question of clarification, too, on your reservation? Would you yield on your reservation?

Mr. WISE. Certainly.

Mr. MCCOLLUM. Am I correct that what Mr. Evans and Mr. Barr wanted put in the record beyond Mr. Evans' statement were copies of the transcript of the trial proceedings he was involved with that are relevant? He has those in his briefcase. Is that not what you are referring to, Mr. Evans?

Mr. EVANS. I am referring to excerpts from the trial transcript. I am sure you have them somewhere, but it would be easier for me to put it in and point it out to you.

Mr. MCCOLLUM. I think that is what he wanted to introduce.

Mr. WISE. I am just wondering at this point whether we ought to just get a copy of the trial transcript and introduce the whole thing, not just the salient parts that Mr. Evans has with him.

Mr. ZELIFF. I think we probably already have it, but without objection, so ordered. If you will withdraw your objection?

Mr. WISE. Certainly.

Mr. ZELIFF. Without objection, so ordered.

[The information follows:]

MEMORANDUM FOR RONALD K. NOBLE  
ASSISTANT SECRETARY FOR ENFORCEMENT

FROM: Sarah Elizabeth Jones

RE: ATF Statements and Issues concerning ATF Knowledge  
of the Loss of the Element of Surprise

DATE: September 17, 1993

March 1, 1993

Troy WAR Interview

ATF initiates a shooting review. David Troy and Bill Wood interview Rodriguez and Mastin(3/1), Chojnacki(3/3), Cavanaugh(3/3), Sarabyn(3/2). Troy tells Review they immediately determined that these stories did not add up. They communicated information to both Hartnett and Conroy on the day or day after each interview. Conroy gave Troy's handwritten notes to Hartnett. (Note- Johnston at this point advised Hartnett to stop the ATF shooting review because ATF was creating Brady material. Because Chojnacki had not yet been interviewed, Johnston authorized that interview but no notes were created.)

No statements  
on 2/24/93

R. J. W.  
Wheeler?

March 2, 1993 Killorin UPI

"I think we lost the element of surprise."

March 3, 1993 Hartnett Reuters Tr. Report  
CNN, LETN

Answered question "when the undercover agent heard this  
phone call, did he realize at the time that this was a tip?  
"He did not realize this was a tip at the time."

March 4, 1993 Hartnett L.A. Times

"An undercover operative who had penetrated the cult  
overhead Koresh receiving the call but was not aware that he  
knew about the raid. At the time the phone call was made to  
the compound the undercover agent did not realize that the  
raid had been compromised."

UNITED STATES OF AMERICA  
MERIT SYSTEM PROTECTION BOARD  
DENVER FIELD OFFICE

PHILLIP J. CHOJNACKI,	)	
	)	
Appellant,	)	
	)	
v.	)	Docket No.
	)	DA-0752-95-0126-I-1
DEPARTMENT OF THE TREASURY,	)	
	)	
Agency.	)	
	)	

**SETTLEMENT AGREEMENT**

The parties solely to resolve this matter without further litigation freely and voluntarily enter into the following agreement in settlement of this appeal.

1. The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (hereinafter "Agency"), will reinstate Phillip J. Chojnacki (hereinafter "Appellant") to Federal service retroactive to October 28, 1994, with back pay and ~~benefits~~, less any offsets or withholdings required by law. Pursuant to the terms specified below, Appellant will be reassigned to the position of Enforcement Programs Specialist (Series 1801, Grade 14, step 10), Criminal Enforcement Programs, Bureau of Alcohol, Tobacco and Firearms, a position under the law enforcement retirement system (hereinafter "6(c) retirement") and which receives law enforcement Availability pay (hereinafter "Availability



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pay"). This reassignment is being made in the interest of the Agency and entitles Appellant to pay retention under the provisions of 5 C.F.R. Part 536.

2. Upon execution of this agreement and until the effective date of his reassignment under paragraph 5, Appellant will be returned to his last position and grade of record, and Houston, Texas, will remain his permanent duty station.

3. Upon execution of this agreement and until January 9, 1995, Appellant will be detailed to the Criminal Enforcement Program. Upon execution of this agreement and until January 7, 1995, Appellant will be in an annual leave status.

4. If by January 9, 1995, Appellant has any unused annual leave in excess of 240 hours, commonly referred to as "use or lose time," Appellant will be allowed to carry over this unused "use or lose" leave to 1995.

5. Effective January 9, 1995, and until January 8, 1997, Appellant will be permanently reassigned to the position of Enforcement Programs Specialist, and will be stationed in Houston, Texas. During this period Appellant will be detailed to perform meaningful duties with the U.S. Customs Service, Houston, Texas.

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6. Effective January 9, 1995, and until Appellant's mandatory retirement at age 57, Appellant will receive retained pay.

7. Effective January 9, 1997, the Agency may transfer Appellant to another post of duty consistent with Agency needs.

8. In the event the position of Enforcement Programs Specialist is abolished or loses its receipt of 6(c) retirement or Availability pay while occupied by the Appellant, the Agency will, consistent with Federal law and regulations, secure another position with the same benefits and duty station.

9. The Agency will not take any action with regard to Appellant that is inconsistent with, in derogation of, or in detriment to this settlement agreement including any rights Appellant may have to representation by Counsel.

10. By entering into this agreement, neither party admits to any violation of law, rule, or regulation, and Appellant does not admit to the charges made by the Agency.

11. The Agency will pay Appellant's attorney's fees to the extent that such fees are reasonable, not otherwise covered by a legal defense fund, and are in accordance with law and substantiated by an itemized statement of services. The Agency will not pay fees that have been paid by insurance and that are not subject to a subrogation

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clause. An itemized statement of services will be provided by Appellant's counsel prior to payment of any fees by the Agency. Gail M. Dickenson's itemization of services will include an itemization of services for the period of her joint representation of Appellant and Charles Sarabyn. The Agency agrees to pay any uncontested fees to Appellant's attorney. If any portion of the fees is contested, the parties mutually agree that the issue of contested attorney's fees will be jointly submitted to MSPB Judge James Kasic for mediation. If mediation by Judge Kasic does not resolve the issue, the Appellant will file a petition for enforcement as to any fees remaining in dispute.

12. The parties agree that this settlement agreement will be submitted to the Merit Systems Protection Board for incorporation as a part of the official record of this appeal. The parties jointly agree to the continued jurisdiction of the Board for purposes of enforcing the terms of this agreement upon either party. Both parties further agree that all documents filed by them or on their behalf including, but not limited to, the petition of appeal, the Agency File, motions, and supporting documents, to the extent allowed by applicable Board law and regulations, will be withdrawn from the official record of this appeal. Appellant and Appellant's counsel agree not to disclose reports of the interviews conducted by the Waco

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Administrative Review Team, the Texas Rangers interviews, and the ATF shooting review notes, which were provided to them in the course of this matter. The parties understand that it is the intention of the Board to forward to the Agency for processing all pending and future Freedom of Information Act requests relating to the withdrawn documents.

13. This agreement constitutes a final settlement of any and all claims, charges, or causes of action that were or could have been brought by the Agency against the Appellant relating to ATF's investigation of Vernon Wayne Howell, aka, David Koresh and the Branch Davidians outside of Waco, Texas, and subsequent related investigations or reviews by the Texas Rangers or the Department of the Treasury, and all claims, charges, or causes of action against Appellant known to the Agency at the time of the execution of this agreement.

14. The Appellant's official personnel file (OPF) will reflect his voluntary reduction in grade and voluntary change in service. Any reference in the OPF, the employee performance file (EPF), and in any disciplinary file, to this disciplinary action will be expunged. Any documents in these files relating to or concerning disciplinary action

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will be removed and destroyed. The SF 50, reflecting the Appellant's removal will be expunged and replaced with an SF 50 reflecting a voluntary action by the Appellant.

15. Except as otherwise noted herein, the parties agree to bear their own costs and fees incurred in connection with this appeal. The parties specifically note that Appellant may petition for additional fees and costs incurred if required to bring an action to effect compliance with this settlement agreement or by the event of a breach of this agreement.

16. It is the understanding of the parties that by entering into this agreement Appellant will continue in a position in Federal service in the Agency that will preserve his 6(c) retirement status and will preserve his continued receipt of Availability pay, consistent with Federal law and regulations.

17. The terms and conditions set forth in this agreement constitute the full understanding of the parties in relation to the settlement of this appeal, and no understanding or agreement exists between the parties except as expressly set forth herein. The parties further agree that no modification of this agreement will be effective unless agreed to in writing by the Appellant and the Agency.

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In light of the above settlement agreement and stipulations, the parties respectfully request that this settlement agreement be accepted into the Board's official record of these proceedings and that a decision be rendered incorporating the terms of this agreement and dismissing this appeal.

FOR THE APPELLANT:

  
 Phillip J. Chojnacki  
 Appellant

12/20/94  
 Date

  
 Gail M. Dickenson  
 Attorney for Appellant

12/21/94  
 Date

FOR THE AGENCY:

  
 Daniel R. Black  
 Deputy Director, ATF

12/14/94  
 Date

  
 Federico W. Lopez  
 Agency Counsel

Dec 16, 1994  
 Date

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
DENVER FIELD OFFICE

CHARLES D. SARABYN,	)	
	)	
Appellant,	)	
	)	
v.	)	DOCKET NUMBER
	)	DA-0752-95-0127-I-1
DEPARTMENT OF THE TREASURY,	)	
	)	
Agency.	)	
	)	

**SETTLEMENT AGREEMENT**

The parties, solely to resolve this matter without further litigation, freely and voluntarily enter into the following agreement in settlement of this appeal.

1. The Agency will reinstate Charles D. Sarabyn (hereinafter "Appellant") to Federal service retroactive to October 28, 1994, with back pay and benefits, less any offsets or withholdings required by law. Pursuant to the terms specified below, Appellant will be reassigned to the position of Chief, Visual Information Branch (Series 1801, Grade 14, step 10), in the Office of Science and Information Technology, Bureau of Alcohol, Tobacco and Firearms (hereinafter "ATF"), a position under the law enforcement retirement system (hereinafter "6(c) retirement") that receives law enforcement "Availability pay."

2. Upon execution of this agreement, and until the effective date of his reassignment under paragraph 6,

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Appellant will be returned to his last position and grade of record, and Houston, Texas, will remain his permanent duty station.

3. Upon execution of this agreement, Appellant will be detailed to the position of Chief, Visual Information Branch, the assignment to be performed in Washington, DC, or other appropriate locations. However, in no event will the Appellant be required to remain in a travel status away from his permanent duty station more than two consecutive weeks.

4. Upon execution of this agreement and until January 7, 1995, or a later date, agreed to by Appellant and Agency, Appellant will be allowed to use annual leave.

5. If by January 9, 1995, Appellant has any unused annual leave in excess of 240 hours, commonly referred to as "use or lose time," Appellant will be allowed to carry over this unused "use or lose" leave to 1995.

6. No earlier than June 15, 1995, Appellant will be permanently reassigned to the position of Chief, Visual Information Branch, described in paragraph 1.

7. Effective with Appellant's reassignment to ATF Headquarters and permanent change of position, described in paragraph 6, Appellant will be granted a permanent change of station move (PCS) with all benefits provided by Federal law and regulations. No provision of this agreement will adversely affect these benefits.



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8. In the event the position of Chief, Visual Information Branch, is abolished or loses its receipt of 6(c) retirement or Availability pay while occupied by the Appellant, the Agency will, consistent with Federal law and regulations, secure another position with the same benefits.

9. The Agency will not take any action with regard to Appellant that is inconsistent with, in derogation of, or in detriment to this settlement agreement, including any rights Appellant may have to representation by counsel.

10. By entering into this agreement, neither party admits to any violation of law, rule, or regulation, and Appellant does not admit to the charges made by the Agency.

11. The Agency will pay Appellant's attorney's fees to the extent that such fees are reasonable, not otherwise covered by a legal defense fund, and are in accordance with law and substantiated by an itemized statement of services. The Agency will not pay fees that have been paid by insurance and that are not subject to a subrogation clause. An itemized statement of services will be provided to the Agency by Stephen Gardner and Gail M. Dickenson prior to payment of any fees by the Agency. Gail M. Dickenson's itemization of services will include an itemization of services for the period of her joint representation of Appellant and Phillip Chojnacki. The Agency agrees to pay any uncontested fees to Appellant's attorney(s). If any

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portion of the fees is contested, the parties mutually agree that the issue of contested attorney's fees will be jointly submitted to MSPB Judge James Kasic for mediation. If mediation by Judge Kasic does not resolve the issue, the Appellant will file a petition for enforcement as to any fees remaining in dispute. The parties further agree that the issue of attorney's fees may be divided for purposes of resolution between services provided by Stephen Gardner and Gail M. Dickenson. As of December 6, 1994, Stephen Gardner claims attorney's fees in the amount of \$18,028.13 and Gail M. Dickenson claims attorney's fees in the amount of \$21,424.29.

12. The parties agree that this settlement agreement will be submitted to the Merit Systems Protection Board for incorporation as a part of the official record of this appeal. The parties jointly agree to the continued jurisdiction of the Board for purposes of enforcing the terms of this agreement upon either party. Both parties further agree that all documents filed by them or on their behalf including, but not limited to, the petition of appeal, the Agency File, motions, and supporting documents, to the extent allowed by applicable Board law and regulation, will be withdrawn from the official record of this appeal. Appellant and Appellant's counsel agree not to disclose reports of the interviews conducted by the Waco

- 5 -

Administrative Review Team, the Texas Rangers interviews, and the ATF shooting review notes. The parties understand that it is the intention of the Board to forward to the Agency for processing all pending and future Freedom of Information Act requests relating to the withdrawn documents.

13. This agreement constitutes a final settlement of any and all claims, charges, or causes of action that were or could have been brought by the Agency against the Appellant relating to ATF's investigation of Vernon Wayne Howell, aka, David Koresh, and the Branch Davidians outside of Waco, Texas, and subsequent related investigations or reviews by the Texas Rangers or the Department of the Treasury, and all claims, charges, or causes of action against Appellant known to the Agency at the time of the execution of this agreement.

14. The Appellant freely and voluntarily agrees to the terms of this agreement and upon acceptance into the record by the Board of this agreement, the Appellant further agrees to the dismissal of this appeal. The Appellant will not pursue any further legal action in any forum with respect to any issue arising out of the personnel action which is the subject of this MSPB appeal, except to the extent necessary to ensure the Agency's compliance with the settlement agreement.

15. The Appellant's official personnel file (OPF) will reflect his voluntary reduction in grade and voluntary change in service. Any reference in the OPF, the employee performance file (EPF), and in any disciplinary file, to this disciplinary action will be expunged. Any documents in these files relating to or concerning disciplinary action will be removed and destroyed. The SF 50 reflecting the Appellant's removal will be expunged and replaced with an SF 50 reflecting a voluntary action by the Appellant.

16. Except as otherwise noted herein, the parties agree to bear their own costs and fees incurred in connection with this appeal. The parties specifically note that Appellant may petition for additional fees and costs incurred if required to bring an action to effect compliance with this settlement agreement or in the event of a breach of this agreement.

17. The terms and conditions set forth in this agreement constitute the full understanding of the parties in relation to the settlement of this appeal, and no understanding or agreements exist between the parties except as expressly set forth herein.

It is the understanding of the parties that by entering into this agreement Appellant will continue in a position in Federal service in the Agency that will preserve his 6(c) retirement status and will preserve his continued receipt

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of Availability pay, consistent with Federal law and regulations. In light of the above settlement agreement and stipulations, the parties respectfully request that this settlement agreement be accepted into the Board's official record of these proceedings and that a decision be rendered incorporating the terms of this agreement and dismissing this appeal.

FOR THE APPELLANT:

Charles D Sarabyn  
Charles D. Sarabyn  
Appellant

12/20/94  
Date

Steph Gardner  
Steph Gardner  
Attorney for Appellant

12/21/94  
Date

FOR THE AGENCY:

Daniel R. Black  
Daniel R. Black  
Deputy Director, ATF

12/16/94  
Date

Federico W. Lopez  
Federico W. Lopez  
Agency Counsel

Dec 16 1994  
Date

Dear Chuck:

Thought I'd just go thru the book page by page & make comments. You can sort out what you need.

- Page 10: 2<sup>nd</sup> & fairly captures what I said to Russian team as to the awareness & questions based on my conversation w/ Dan Hurtack. (I understand you got the 3<sup>rd</sup> hand and did not understand it as I did.) Incidentally RT's concern were very little about safety, -- primarily informational (e.g. what was role of NO, what other alt agencies were involved) and with a vein toward avoiding any embarrassment to Bureau should anything go wrong.
- Page 65: While inaccurate, I do not remember deciding that case to be taken with the derogatory fleabangs were telling the Russian team that I did. In that matter the briefing I got was not similar to the one the day before -- I recall it was fairly abbreviated. I did approve the read going forward.
- Page 75: As I recall, although Chris Anglin would be a better source, he also offered to verbally brief Noble & Simpson (or just Simpson) but they were too busy and postponed him off on the special assignments, one of whom I believe is the now infamous Jack Sullivan (then Ottomani's and presently Barkin's Chief of Staff).
- Page 96: Again this fairly accurately describes our conversation other than what I mentioned earlier about their questions being non-substantive, CIA the okay-type.
- Page 85: Have you ever wondered how the footnote (if accurate) squares w/ what Rodriguez says about not seeing the Co-70 TRAC agent post. Especially since Becker thought they were too?

- Pg 115: Actually I missed closer to 1971. That not important. But he also forgot to mention that he ordered Hartnett to relay message to FBI, when he said I thought it was the wrong thing to do -- that joint control made better sense.
- Pg 151: Last 11 -- believe management did ask the "if" question. Ironically, as I noted before, NIT did not before giving their approval.
- Pg 179: This seems to be a more accurate description of the NITs. Bayler had asked I still believe (and Bayler can confirm) that the only one who had been to receive even the shortest of a briefing was Riebel to Steiner -- not Noble, Simpson, et al.
- Pg 179: Top of page, I did offer objections, but was basically over-ruled. I felt it was silly to call off a raid, primarily for what I discerned was their real reason -- wanting to avoid embarrassment for Britain should something go wrong. The rest is pretty accurate other than I'm reasonably certain I said U/A would go in with Sat & Sunday.
- Pg 180: Top of pg, they're right. They have been giving a heads up about our good practices for 11 years I was Director. They have not been asked for approval, although they decided to put themselves in on the final day -- which I guess they liked until things went wrong.
- Pg 181: I like their gratuitous comment about "pat" encumbers, if they were so "pat", why did I have to go back to Hartnett for info.

-3-

Pg 197: I did not deny we knew he received a tip by telephone, nor was I even asked about a phone call. (Obviously, denying there was a tip by phone would have been a truthful statement the way things turned out. My statement was that we would not knowingly lead our agents into an ambush. By that time I had heard, from Brighton in IT to Martin at one of the London journals, that there was some difference between what U/C officer said he said to you and what you said you heard. I relayed this concern to Horneath (who told me U/C officer was very upset and was giving changing statements) and also to Nibel at about the same time. Horneath told me he had no reason to believe you or Phil knew the said was compromised so that's why I answered the way I did. I also told Nibel that Horneath felt the reason for the two conflicting stories was that the U/C agent had given 2 different statements. Martin did not indicate to me at the journal that he thought the said was compromised and that he thought your disclosure may have been genuine, solely to Horneath's opinion in always feeling IT was wrong.

In the report  
Robert never  
mentioned my  
testifying him  
as a stake  
I feared not!

Ref 300: Footnote 44 → I have no record or recollection of <sup>com</sup> this part  
Sey. Batten.

Page 202: My feeling is that both Don's never told me about the mounting weight of evidence that you & Phil's account was false is because they did not believe you were lying. They did tell me later in the month of their concern about the conflicting reports being circulated, and we agreed the best thing to do was to make you & Phil available either to the press, the Hall, or both as you could explain why you had made the decision and put the onus on them to bid me to go all. MT (Noble, Devore, Stordis, etc)



all refused to let us do that which really makes their claims that our attempt to cover up a travesty.

Pg 202: My statement on the Friday show came after watching a videotape that same morning in which Jorg suggested to a friend of about amount it takes the U/C left behind and went to the U/C House where he told Rosemary that Korsch knew ATT was coming. Jorg said that was not true, which I interpreted to mean that it had pretty well been revealed that your account was accurate - since Jorg did the initial interview. I was later told by the same person that Jorg said he was lying on the videotape when he made that statement. I've been asked to know if that's what he told them.

Pg 203: I told the Review Team, twice -- not once -- that I never made the "war paint" statement yet they still included it because Pao told them I had said it.

Pg 205: While I think I did a number of things to resolve the issue, e.g. asking & being denied approval to make you both available for interview, asking for an outside review of the incident, writing a memo to all employees saying we would ultimately find out as much as possible but there would be no OMBs, etc., apparently that wasn't enough according to Noh.

Pg 206: I ignored the Treasury requests not to say what they approved all my interviews, and they were responsible for preventing me from telling Congress the whole story. Amazing.

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I didn't comment on the "efforts" because none of them even interested me.

Again I think you two have been treated shamefully and am hopeful it will work out for you in the final analysis. Let me know if I can ever be of assistance in the future. I have no less respect for you now than I did prior to Waco. In fact it is probably greater today & I've observed the way you have handled what had to be one of the most stressful events one can imagine.

all the Best,  
Steve

Mr. BARR. Mr. Chairman, could I clarify when Mr. Schumer moved to have the Department of Justice news release entered in, it was entered in at that time?

Mr. ZELIFF. That is correct.

Mr. BARR. OK, thank you.

Mr. SOUDER. Point of clarification, Mr. Chairman. We didn't put the whole trial transcripts in from the trial. Is that going to be in our records?

Mr. ZELIFF. The excerpts are what I heard.

Mr. WISE. So far it is the excerpts.

Mr. SOUDER. I just want to clarify what happened.

Mr. ZELIFF. He just has a small briefcase.

Mr. SOUDER. There were just some notes there.

Mr. EVANS. It is small. I will find it.

Mr. ZELIFF. OK. I have got 7½ minutes, and Mr. Evans, can you—I think we have reviewed these documents over here to your left. Having reviewed them, how would you characterize the actions of the Justice Department?

Mr. EVANS. If you look at the face of these documents and the words that are written on there, to me it points squarely to an obstruction of justice.

Mr. ZELIFF. It does. OK, thank you very much.

Let me ask you this. Do you feel—you have been here just for a few hours. We have been here, it seems like, for many, many days, but this is our third day. There are some who have said that nothing new has come out of these hearings. Have you heard anything new today?

Mr. EVANS. Absolutely, I have heard something new today. I heard it first 2 days ago when Congressman Barr brought it forward, but it is more than that.

Mr. ZELIFF. At the end of three days how would you just quickly in a minute characterize some of the things that you consider to be important that have come out of these hearings?

Mr. EVANS. The main lesson is that we have got to learn that even though the vast majority of law enforcement is honest and dedicated, there have got—they take their ranks from the same pool of humanity the rest of us are from, and there is going to be a percentage in there that will be willing to lie and distort the truth either to get what they want, like helicopters, or to cover their backside when they are criticized like others, and this case is permeated through and through with it.

Mr. ZELIFF. Have you read the Treasury Department report?

Mr. EVANS. A year ago.

Mr. ZELIFF. Either yes or no.

Mr. EVANS. Well, yes.

Mr. ZELIFF. You have. Do you feel that—I mean, we have heard 70 percent agreements and 72 percent. Where would you weigh in? Do you think that as it is written tells the story in a very correct way?

Mr. EVANS. Here is the problem with it. I don't know about the good faith of the folks who said that it is reliable and thorough and all that, but the problem with it is this: That house is built on a foundation of shifting sand. Because to believe that Treasury report you have to believe the reports of the agents who were giving you

the information, and from day one their stories didn't add up. And then you——

Mr. ZELIFF. Are you saying that there were agents of either the FBI or ATF that either changed, forged or rewrote documents or misled their—I am trying to figure out what you are saying.

Mr. EVANS. You see, I don't know what this refers to. I am just saying that there is a track record, there is a history throughout this case of different agents and different agencies—even the FBI—who would make misrepresentations for their own personal benefit, and there has got to be a way to safeguard against that. The meth lab is one, this false affidavit in the second shooting in order to get Norman Allison in jail for a year. I could go on because I made a list.

Mr. ZELIFF. Let me ask you, what do you know about the gas, the CS gas, and the decision that was made to use it?

Mr. EVANS. Nothing. I am not the person to ask about that.

Mr. ZELIFF. You are not the person to ask that.

Do you feel that—and I will go to Ms. Sparks in a second—do you feel this whole investigation has been covered up in any way? Do you think all the information has gotten out?

Mr. EVANS. I am not sure that there has been some evil person lurking back there covering this up. But through the process of the things I have described, this propensity to change stories, lie to cover your backside, that, yes, the end result was that the true, actual facts in this case have not yet been developed.

Mr. ZELIFF. Do you think we have made some progress but we have got more to go?

Mr. EVANS. Some progress. I beg you to narrow the issues and ask these witnesses questions and get it out right here.

One thing I would like for you to do, to ask for, though, it just came through my mind, I wonder if the ATF prepared a press release for what would happen if this raid didn't blow up in everybody's face. You know, they had that PR table there. I bet you they had a prepared press release, but the judge in Waco wouldn't let us ask for it because he thought it was immaterial. But it is not immaterial to you folks. Maybe it doesn't exist.

Mr. ZELIFF. Maybe we will pursue that.

Mrs. Sparks, tell us about the coordination you had with the FBI or was it ATF concerning CS gas or was it both?

Ms. SPARKS. It was an ATF agent that I spoke with from the command post.

Mr. ZELIFF. ATF agent. Tell us about that.

Ms. SPARKS. He called. We talked about the plan. I asked him what kind of protective clothing my staff would wear, what kind of effect it was going to have on the children and my staff. We discussed it at some length. There was going to be medical personnel and onsite showers.

Mr. ZELIFF. How far in advance was this before the——

Ms. SPARKS. I couldn't find my handwritten notes, but what I remember is like the end of March.

Mr. ZELIFF. End of March. And so it was pretty well decided way in advance then, or was it?

Ms. SPARKS. Well, what we were told was he called me back at 5:30 and said, you know, forget it, don't even think about it. What we assumed was that they had decided it was too dangerous.

Mr. ZELIFF. On all the—you seem to have had a fairly good rapport with David. At least you could talk to him. He understood you. You understood him. You were able to get in, to some limited degree, to see the children. Did you see cases of sanitation abuse, bad sanitary conditions? Just describe what you saw.

Ms. SPARKS. Yes. There was no running water and no indoor plumbing, and so they had big buckets that they were using to bathroom in. They said they buried it after that. But there were concerns. There had been some hepatitis B infection, and there were just real concerns, no running water and no bathroom facilities.

Mr. ZELIFF. We thank you.

In closing this day of oversight hearings—I guess it is actually the third day—in the events at Waco, I must say we have learned a lot. We have seen documents that show Secretary Bentsen had a memo in his possession that stated on April 15, 4 days before the fire that killed the 80 Americans and 22 children, and I quote, “that the risks of a tragedy are there, and if the FBI waits indefinitely Mr. Koresh will eventually concede.”

Second, we have seen brand new Justice Department memos that now show clearly, that indicate several incidents of what have now been described, and testimony as obstruction of justice relating to the Waco shooting review and the Brady evidence.

Third, the FBI cancelled the CS gas followup and precautions of children regarding Mrs. Sparks only days before the CS was used with deadly results.

Fourth, Mr. Higgins was aware of the new fact which we now have in a document that we—that is involving a startling quote, in quotes, embarrassment to Secretary Bentsen was the real reason Treasury considered calling off the raid.

Finally, Mr. Morrison said, and I quote, “The element of surprise was critical, yet the raid went forward without it.”

In closing, with 3 days into our 8 days, and I for one am now better educated on Waco but also deeply troubled, there is an awful lot left to come out, there is a lot that has been thrown, tried to throw us off, a lot of coordinated damage control going on.

The truth is still our goal, truth is still our aim. And I make no apologies. We are going to be totally committed to get to the bottom of this. I thank you all.

And I would like to give Mr. Kolman, who is the minority witness, who is one person that hasn't had a chance at all to say—I don't think the minority would disagree, but since he has come this distance, if you have a minute or so, any comment that you would like to make.

Mr. KOLMAN. Yes, thank you, Mr. Chairman. I appreciate that greatly.

I have been here in Washington for 7 days waiting to testify, and I hope that I might be able to shed some light, perhaps allay some of your concerns and fears based upon my experience in law enforcement tactical operations and my independent review of what transpired outside of Waco, TX, on February 28, 1993.

Let me just say that I retired in 1987 after 26 years of law enforcement experience, nine of which were spent with a tactical unit as both a SWAT team leader and later as a SWAT commander in overall charge of all eight of the Department SWAT teams at that time. I had occasion over the years to work with the Bureau of Alcohol, Tobacco and Firearms many, many times. I have always found them to be a highly dedicated professional group of men and women who, in my opinion, do an extremely difficult job very well.

I don't see this, based upon my review of the countless documents and videotape and other documents that were provided to the panelists to review, as any kind of a conspiracy to fail. These are professional men and women.

Were there deficiencies in the operation? Absolutely. But to their credit, ATF has done everything within their power, in my opinion, to accept the recommendations of the review and the panelists and have taken very positive steps to change for the better.

I think what they need from this committee and the American people are their support. I think there has been a lot of misinformation in these hearings. I just wish that I would have had an opportunity to help you clarify them, but whether I was on the wrong panel or people just didn't like me and didn't want to ask questions, I don't know.

Mr. ZELIFF. I certainly like you, because that is why I gave you the opportunity to respond.

Mr. KOLMAN. That was very kind of you.

Mr. ZELIFF. I will tell you, frankly, it is a very difficult task that we have before us. I don't think there is anybody on either side of the aisle here that doesn't have anything but the absolute top respect for our law enforcement folks that deal with us and our safety day in and day out. And what we are dealing with here is where mistakes made and it could be at the highest levels. It could be at the management. There are many, many loyal people just doing what they are told to do in their willingness to serve and give us their commitment.

In four cases, four ATF agents died in their commission and commitment to service. And so out of respect for them, out of respect for our country and the balance of power and the role of oversight and the fact that no one is above the law, I think what these hearings are trying to do very desperately is to get at the bottom of what really happened.

Somehow if there were mistakes made, I think the American people are very forgiving. They will forgive those mistakes. Let's fix the problem if there is a problem. Let's go on and close the book. Let's then have the credibility back in place for our law enforcement. That is what we need. That is our goal as well.

These hearings now conclude at the end of the third—go ahead.

Mr. TAYLOR. Mr. Chairman, Mr. Kolman has indicated both to me and to you that he obviously has something he wants to get off his chest. I realize people want to catch planes. I would ask, in fairness, that he be given unanimous consent to put his statement, whatever that statement is, in the record, since we all are in a hurry to go catch planes and get back to our homes.

Mr. ZELIFF. Without objection, so ordered.

I assumed that all of them heard this—and you may have been out of the room. Everybody's statements are included in the record and any material that anybody would like to include. So, without objection, so ordered.

Mr. ZELIFF. The hearing is adjourned. We will reconvene on Monday morning at 9:30—sorry, it is 10.

[Whereupon, at 7:02 p.m., the subcommittees adjourned.]





# ACTIVITIES OF FEDERAL LAW ENFORCEMENT AGENCIES TOWARD THE BRANCH DAVIDIANS

## (Part 1)

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MONDAY, JULY 24, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CRIME,  
COMMITTEE ON THE JUDICIARY, JOINTLY WITH THE  
SUBCOMMITTEE ON NATIONAL SECURITY, INTER-  
NATIONAL AFFAIRS, AND CRIMINAL JUSTICE, COMMIT-  
TEE ON GOVERNMENT REFORM AND OVERSIGHT,

*Washington, DC.*

The subcommittees met, pursuant to notice, at 10:15 a.m., in room 2154, Rayburn House Office Building, Hon. Bill McCollum (chairman of the Subcommittee on Crime) presiding, and Hon. William H. Zeliff, Jr. (chairman of the Subcommittee on National Security, International Affairs, and Criminal Justice).

Present from the Subcommittee on Crime: Representatives Bill McCollum, Steve Schiff, Stephen E. Buyer, Howard Coble, Fred Heineman, Ed Bryant of Tennessee, Steve Chabot, Bob Barr, Charles E. Schumer, Robert C. Scott, Zoe Lofgren, Sheila Jackson Lee, and Melvin L. Watt.

Present from the Subcommittee on National Security, International Affairs, and Criminal Justice: Representatives William H. Zeliff, Jr., Robert L. Ehrlich, Jr., Steven Schiff, Ileana Ros-Lehtinen, John L. Mica, Peter Blute, Mark E. Souder, John B. Shadegg, Karen L. Thurman, Robert E. Wise, Jr., Gene Taylor, Tom Lantos, Louise McIntosh Slaughter, Gary A. Condit, and Bill K. Brewster.

Also present from the Committee on the Judiciary: Representative Henry J. Hyde and John Conyers, Jr.

Also present from the Committee on Government Reform and Oversight: Representatives William F. Clinger, Jr., and Cardiss Collins of Illinois.

Staff present from the Subcommittee on Crime: Paul J. McNulty, chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, assistant counsel; Audray L. Clement, clerk; Committee on the Judiciary: Alan F. Coffey, Jr., general counsel/staff director; Dan Freeman, parliamentarian; Julian Epstein, minority staff director; Perry Apelbaum, minority general counsel; Melanie Sloan, minority counsel; and Tom Diaz, minority counsel.

Staff present from the Subcommittee on National Security, International Affairs, and Criminal Justice: Robert Charles, staff director and chief counsel; T. March Bell, counsel for justice affairs; L.

Stephan Vincze, defense counsel; Marshall Cobleigh, senior policy advisor; Michele Lang, special counsel; Sean Littlefield, special assistant and clerk; Committee on Government Reform and Oversight: Kevin Sabo, general counsel; Judith McCoy, chief clerk; Jeffrey Wilmot, professional staff member; Bud Myers, minority staff director; David Schooler, minority chief counsel; Ronald Stroman, minority deputy staff director; Donald Goldberg, minority assistant to counsel; Cherri Branson, minority professional staff member; Ellen Rayner, minority chief clerk; Cecelia Morton, minority office manager; and Eddie Arnold, public affairs officer.

Mr. MCCOLLUM. This hearing will come to order.

I would like to ask the witnesses that are here to be seated. We are going to have the four opening statements that we have each morning before we swear the witnesses and introduce you. Please join us and we will get started on these hearings.

I am going to start the discussion this morning. I would like to make my opening statement.

We begin day four of these hearings by focusing on the day of the ATF raid, February 28, 1993. Our witnesses are those who actually participated in and directed the raid. Later today we will finish our examination of the Treasury Department's part of the Waco story by receiving the testimony of Ron Noble, Under Secretary for Law Enforcement at the Treasury Department, and John Magaw, the current Director of ATF.

I have a couple of thoughts to share with you this morning. After listening to the President's Chief of Staff, Leon Panetta, discuss the Waco hearings on "Face the Nation" yesterday, I realized how trivialized these hearings are in danger of becoming as a result of the administration's political overreaction to them.

The events of Waco in 1993 were tragic; 90 Americans, including 22 children and 4 ATF officers, were killed, and many more wounded. All of America was stunned. Today, I share the sorrow of Waco with the families of those killed and wounded. These hearings were and are designed to allow our Nation to fully vent the pent-up feelings of sorrow, dismay, and anger that arose from the ashes of Waco; to do the first and only comprehensive congressional review of what happened at Waco; to debunk outlandish conspiracy theories, but at the same time to hold all of those responsible publicly accountable; and to begin the process of healing necessary to restore confidence and credibility in two of our key Federal law enforcement agencies.

Apparently out of fear that the revelations in these hearings could damage the Clinton Presidency, the White House, Congressman Schumer, and some at Treasury and Justice set out this past week to ridicule, trivialize, and discredit these hearings.

First, a political operative was hired by the White House just for Waco political damage control. Then the line was put forward that these hearings were being held just to please the National Rifle Association, that somehow they were tainted. By the end of the week, the President's press spokesman, Mike McCurry, said quote, the NRA bought and paid for these congressional hearings, unquote. Whatever one thinks of the NRA, this is just plain political hogwash.

Then the argument was put forward that there was nothing new coming out of these hearings, and, despite this gross misstatement of reality, it has been repeated ad nauseam presumably on the premise that if you tell a big enough lie long enough, enough people will believe it or, at the very least, they will finally turn off their TV sets.

Along with that came the effort to focus the public's entire attention on the child abuse committed at the Davidian compound by David Koresh, with both Mr. Schumer and the President implying that these moral atrocities alone justify the ATF raid and perhaps even excused all of the tragic mistakes of the ATF, the FBI, the Treasury, the Justice Department, and whoever else.

Of course this conveniently ignores the fact that Federal law enforcement has no jurisdiction over child abuse and disregards the fact that not only David Koresh but also the mistakes of law enforcement and higher-ups in the administration bear responsibility for the tragic deaths at Waco.

Then came the repeated expression of concern that these hearings would do nothing more than fan the flames of those espousing conspiracy theories and further undermine the ATF and the FBI.

So determined has the administration been to derail these hearings that it was revealed last week that Treasury Secretary Rubin called Congressman Brewster requesting that he not ask questions that could embarrass the administration, and it was learned that the Justice Department is considering bringing up all of the guns from Mount Carmel to Washington just to give Mr. Schumer a convenient and great publicity prop.

Now, it occurs to me that it is the Clinton administration and Mr. Schumer and perhaps some others, by all of these activities to detract from the hearings, who are running the risk of fanning the flames of conspiracy theorists. One could logically ask, why go to all of this trouble if the administration has nothing to hide?

Frankly, I suspect that they just don't want the public to take note of the testimony that has been coming out which reflects pretty badly on some higher-ups in this administration, past and present.

For example, last week we learned that former Secretary of the Treasury Lloyd Bentsen not only was not informed of the ATF raid before it happened but had not even met with ATF Director Higgins in the 30 days or so Secretary Bentsen had been in office.

One can only imagine how different it could have been if Bentsen had simply met with Higgins and routinely asked him what most new bosses ask: Is there anything you have got going on I should know about? Surely Higgins would have told him about Waco. If so Treasury officials could have been paying attention to this a lot sooner had they received the notice at the same time or much earlier than happened when the ATF notified lower-level Treasury officials less than 48 hours before the raid.

I note Bentsen's cavalier attitude last Friday about a memorandum to him from Deputy Secretary Altman, raising great concern about the potential use of CS gas by the FBI in the final assault. One wonders why Secretary Bentsen didn't at least call Attorney General Janet Reno to discuss these concerns, if not President Clinton.

Then there is the incredible set of memoranda we heard about Friday showing the Treasury Department yielding to the request from Justice to stop gathering information in this review of what went wrong at Waco so that Davidians from the compound couldn't use such information to help them defend themselves in their criminal trials.

Last but not least, we heard serious questions raised about the accuracy of some portions of the Treasury Department report on Waco with a clear implication that somebody at Treasury might have been trying to make sure key ATF people took the fall and nobody at Treasury took any of the blame.

Today I will be sending a letter along with Cochairman Bill Zeliff to President Bill Clinton asking him to order his staff to stop this massive public relations and damage control campaign. The American people deserve an opportunity to hear the unadulterated truth about what went wrong at Waco and who is responsible.

If Mr. Schumer and the administration will simply join us in the search for the truth, we can put an end to some of the conspiracy theories, such as we did last week with respect to the military involvement with the February 28 raid.

We have a chance for a fresh start this week. I urge my colleagues on both sides of the aisle to put aside the temptation to score points against each other and just concentrate on getting the facts out.

If these hearings proceed without the show, rhetoric, and bickering of the past week, the chances of this succeeding on all counts will vastly improve. Perhaps we can put much of this tragedy behind us and begin to rebuild public confidence in Federal law enforcement. I think that is the key to this week's hearings and to the concluding 5 days of hearings that we have before us.

We need to join together and simply try to search out the truth. There are a lot of us who believe in the same cause and the same principle in this regard.

With that in mind, I yield to Mr. Zeliff, my cochairman.

Mr. ZELIFF. Thank you, Mr. Chairman.

I appreciate your remarks and couldn't have sized it up any better, and I think that is a good way to start off the week.

I would just like to say from the start that it is amusing to hear the President of the United States criticize these hearings and ask the American public to weigh the moral equivalency of David Koresh and ignore the bungled conduct, perhaps even coverup, of agencies in President Clinton's administration. That's like focusing on the crimes of Rodney King instead of the beating he received.

The focus on the horrible statutory rape of Kiri Jewell and ignoring the fact that more than 80 people died, including 22 children, because the Government decided to conduct a military type raid instead of capture Koresh outside the compound is, in my judgment, irresponsible. Depravity doesn't justify a handsoff attitude toward wrong-headed Government behavior. No one is above the law.

In short, Mr. President, the ends do not justify the means, and in the way I see it, that lesson has a lot of applications.

Let me just say again that these hearings focus on the conduct of the executive branch. They are part of the constitutional process. We cannot in good conscience shy away from tough or embarrass-

ing questions, and, if we did, there would be no reason to have hearings and no reason to believe checks and balances are alive and well in America.

Today is the fourth day of oversight hearings into executive branch conduct at Waco. Today, we will hear about how the raid itself was executed. We will hear about how the ATF agents felt as they approached the raid, about how decisionmakers in Washington understood the original plan, and about other events that were discussed in the Treasury documents.

The first 3 days of these hearings have established that there remain serious questions relating to how the executive branch acted and reacted. We are here today for one purpose, and that is to answer these questions.

For any doubters, I think it now should be clear that we have opened the door to witnesses of every stripe and every opinion. We have heard from Branch Davidians and investigative journalists, from law enforcement officers and leading representatives of our Nation's law enforcement communities. We have heard from members of the Special Forces Unit that trained ATF, from ATF commanders and DEA drug lab experts. We have heard from Treasury reviewers and legal experts on both sides, and the child abuse investigator who went into the Davidian compound. Finally, we have already heard from the former Secretary of the Treasury, the former head of ATF, and a brave child who escaped the fire but didn't escape David Koresh, 14-year-old Kiri Jewell.

My point, in short, is that these hearings are clearly open and fair, as they must be, and we are here to pursue the truth. These events were troubling in 1993, and they remain troubling today. In fact, the need for congressional oversight seems to be validated a little more each day.

More than 80 Americans died in the events we are discussing, courageous line agents who should never have been fired on, and innocent children who should still be alive. Our job, which we take up again today, is to ask how pivotal decisions got made, by whom, when, and why.

I approach these hearings with deep respect for the oversight process and for what it is intended to do. I also approach them with great personal respect for the differing convictions that Members on this dais hold. I believe we are all seeking the real answers, and I think the American public should know that.

My sincere hope is that our mutual respect will guide us through this difficult and, at times, emotional oversight process and yield a truly constructive result for the American people at the conclusion of these hearings 1 week from today.

The bottom line is, in the end, we will be happy to be judged by our results, and I certainly hope that as we get the results and get the truth out, that we can add credibility to the law enforcement agencies, the people that we respect that are so very, very valuable to our daily way of life.

Thank you, Mr. Chairman.

Mr. MCCOLLUM. I yield now to Mr. Schumer.

Mr. SCHUMER. I thank you very much, Mr. Chairman, and appreciate again the opportunity to make an opening statement.

I would say the statement of my good friend, Bill McCollum from Florida, reminds me of the old lawyer's aphorism which is, if you don't have the facts, pound on the law; if you don't have the law, pound on the facts; if you don't have either, pound on the table.

As we enter the second week of the Waco hearings, I think it is appropriate to look back at what we have learned so far and look ahead to the upcoming panels.

Clearly the most memorable witness last week and the person who has set the entire tone of the hearings so far was Kiri Jewell, and we know what she described, how when she was 10 years old she was sexually assaulted by David Koresh. She also told about the widespread sexual and physical abuse within the compound.

We also discovered a very troubling new connection between the National Rifle Association and these hearings. Joyce Sparks, a witness subpoenaed by the majority with some critical things to say about the Waco raid, was approached by a woman claiming to be from the Waco hearing team but who was being paid for by the NRA. This was the third incident of direct contact between the NRA, which calls the ATF jackbooted Government thugs, and this hearing.

In fact, one NRA official was quoted in today's Washington Post as saying, "NRA people at headquarters are dancing in the hallways with glee at the fact that the Waco hearings are on. This is their dream."

As I have repeatedly said, there is nothing wrong with holding hearings into Waco. They are worthwhile if we discover new facts, if we see old facts in a new light, and, most importantly—and this should be all of our goal—if we can use the mistakes at Waco to learn from and to strengthen and improve Federal law enforcement.

What concerns me is that the NRA's involvement shows that the real purpose of these hearings might be different, at least to some, and that is to discredit and so weaken the ATF that they can no longer enforce Brady, the assault weapons ban, and the other gun laws of this country.

It is our job to make a stronger, more effective ATF, as many have said. In the light of the NRA's covert actions surrounding these hearings, we have asked the committee to subpoena NRA employees to get to the bottom of their involvement. Until we clear the air, these hearings will continue to have a cloud hanging over them.

This week we are going to hear about the tragic 51-day siege at the Davidian compound, and today we will learn about ATF's April 19 raid of the Davidian compound. You'll hear that the element of surprise was lost, that Koresh knew about the raid before it happened, and that it should have been called off. All of that, in my judgment, is true.

To raid without the element of surprise was, in my opinion, the greatest mistake of the entire Waco tragedy. But remember, when David Koresh found out that law enforcement was on their way, he didn't lay down his guns, he attacked. Koresh and his followers greeted law enforcement with machineguns and grenades, more firepower than the ATF agents had on themselves.

Nothing, nothing, excused that ambush. Nothing in American law excuses it; nothing in the Bible excuses it. You do not meet a warrant with a machinegun, even if you believe the warrant was illegally and fraudulently obtained.

Who can blame the ATF for acting? Who here, knowing that there were dozens more Kiri Jewells inside the compound, possibly being sexually and physically abused by a madman armed to the teeth, can excoriate the women and men who put their lives on the line to protect us?

Yes, they made mistakes, and yes, it is legitimate for us to hold hearings on these mistakes. But it is wrong, fundamentally wrong, to make them feel like William Buford whose ATF assault team led the raid. Mr. Buford said he felt like he did after coming back from Vietnam, "I did a service for my country and was being criticized for it," he said. We can criticize their actions, but no one should dare criticize their motivations.

There is not one iota of evidence that the ATF and FBI acted for anything but legitimate reasons. I ask those on the other side of the aisle to say as much. And I appreciate Chairman McCollum in his generally fierce opening statement to admit that there was no—that we did clear the air of the military conspiracy part, that the military was not involved, even though we have heard on the news and other things that the military may have stepped over the line. Here Chairman McCollum said that we have cleared the air of that myth.

Over the last couple of days—and just one other point here, Mr. Chairman—over the last couple of days some on the other side of the aisle have been grasping at straws to divert people's attention from the Kiri Jewells and William Bufords.

They yell, "coverup," when the administration has been completely forthcoming in giving every document that has been asked for so far, including documents that have the President's own little notes and handwriting, they cry, "foul," when they have been treated fairly, and they say they have uncovered new facts when all they can show are the ones that have already come to light.

Last week, the majority complained, the gentleman from Florida, and earlier, I believe, the gentleman from New Hampshire, that they have been unable to see the guns seized from the Branch Davidian compound. One member went so far as to call it obstruction that they couldn't see those guns. Yet when Chairman Zeliff realized that the guns may actually be sent to Washington and the American people would see what the ATF agents were facing at the Davidian compound, he changed course and wrote to the Department of Justice asking that the guns not be sent.

Let's bring these guns to Washington to prove once and for all that the weapons were illegally converted machineguns and the warrant was legitimate. That's what we want them here for.

Now, the Republican majority is asking that John Podesta, who apparently has been helping the White House with their hearing preparation, or spin, as they call it, be called as a witness. First, I say fine, call anyone you wish; let's clear the air; let's get rid of all of the lingering questions. But if you're going to call witnesses who we feel are tangential to these hearings, then you should allow

us to call our witnesses who you may feel are tangential to the hearings.

Let's bring the NRA employees here to find out exactly how great their role was in organizing these hearings and finally—well, one other point; talking about spin, that the White House has spin control on this hearing. My goodness, this is like Claude Rains saying in the cafe in Casablanca, "Gambling here? My goodness, does it exist?" I don't see anyone on the majority side saying they don't need a press secretary anymore. Now come on.

Finally, as we move into the 4th, 5th, 6th, 7th, and 8th days of the Waco hearings, the issues of balance and perspective become more apparent. We are investigating these events again. That's fine. But it's outrageous that we still have not had a single day of hearings into a problem that concerns a lot more Americans and poses a far greater risk than the supposed abuses by the ATF or the FBI; the prevalence of paramilitary militias, many of whom are motivated by the events at Waco.

Finally, I am confident the panels this week—that's the third "finally" I've said, I realize that. Finally, I am confident that the panels this week will show once again that we already know that the ATF and the FBI messed up but only because they were faced with an armed madman who was sexually abusing little girls inside his compound.

Mr. MCCOLLUM. Mr. Schumer, you went well over your time. I want to make a couple of quick comments in response before I yield to Mrs. Thurman.

First of all, we have no intention of calling John Podesta. He will not be called, as far as I know, as a witness. That is not our intent.

Second, with respect to the question of the military, after an exhaustive review of the ATF's contact with the Army last week it became very clear that our military neither directed nor took part in the Waco raid by the ATF and the posse comitatus laws were not broken. But where there is responsibility, which to date has been shirked as such appears to be the case with some at the Treasury Department, these hearings have brought these facts to light. I think that that needs to be said as well.

Last but not least, while we have not talked about it and I did not intend to inject them into these hearings as you have been attempting to do, we will hold hearings, probably a couple days of hearings, on the so-called militia, among other things, after we reconvene in the fall.

Mr. SCHUMER. I compliment you on that and salute you on it.

Mr. MCCOLLUM. All of that has been attempted and planned. But to interject some of these things that we have been interjecting into these hearings and have all the bickering and disagreement has not been helpful to the process. So I hope you and I can together work along with Mrs. Thurman and Mr. Zeff to make sure that we get just out on the facts this week and get on line with what we need to be doing here.

Mr. SCHUMER. Mr. Chairman, just one quick point.

Mr. MCCOLLUM. Very quickly.

Mr. SCHUMER. I want to thank you for saying that we will have militia hearings. I think they are important, and I think that means a great deal to us.



Mr. MCCOLLUM. Mrs. Thurman.

Mr. MICA. Mr. Chairman, one point of clarification in response to the gentleman's remarks.

Mr. MCCOLLUM. I don't believe we ought to get into that, Mr. Mica. If we do, it will just go on forever.

Mr. MICA. He inferred that members on this side of the aisle had a press secretary, we all did. I've never had a press secretary. I don't intend to employ one.

Mr. MCCOLLUM. It is noted. We do all have press secretaries, as he well knows. In addition to a press secretary, which clearly the President has, he hired Mr. Podesta just to do damage control.

Mrs. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman, I think.

As we begin our second week of hearings, I would like to take this opportunity to review what I have personally learned from these hearings. To begin with, let me reiterate that I truly believe that these hearings can serve a constructive purpose.

Starting on Wednesday, we heard compelling testimony into the character and beliefs of David Koresh. While I still believe this is a vital component in this process, they were collaborated by Ms. Joyce Sparks of the Texas Department of Protective and Regulatory Services, Division of Child Protective Services, and then again by Dr. Bruce Perry of Baylor University.

On the second day we heard from Bill Buford, recalling the horror of the raid itself as he watched his friends and fellow officers wounded and killed. Every one of us was moved by Mr. Buford's account. Few, if any, of us in this room have ever faced a situation as dangerous as the one Mr. Buford and his fellow officers faced that February day outside of Waco.

This past Friday we took testimony from the distinguished former Secretary of the Treasury, Lloyd Bentsen. While many of my friends on the majority side of the dais spent 5 minutes assigning blame to the mistakes—and there were many significant mistakes in the raid—few took the time to understand what the chairmen have told us on this joint subcommittee the real purpose of these hearings are; to see what corrective measures have been taken and what we here in the Congress can do to make sure a tragedy such as this never occurs again.

Secretary Bentsen walked us through the detailed process of the review of the raid. Here are some important facts that may have been overlooked. No ATF personnel participated in the review to help guarantee the independence of the findings; 17 senior investigators from the IRS, the Secret Service, the Customs Service, and the Financial Crimes Enforcement Network helped with the preparation of the blue book. In addition, 10 outside experts, some of whom we have already heard from, were also brought in to analyze the problems. All involved served without pay. They took over 5 months to complete an exhaustive and thorough approach.

As a result of the findings of the review board, the ATF leadership in Washington and in the field was replaced and other agents were dismissed.

Finally, lessons were learned and actions were taken to correct the problems. Secretary Bentsen freely stated that there was a pattern of inadequate oversight by main Treasury and insufficient

communication between the Office of Law Enforcement and the bureau it is charged with supervising.

Mr. Bentsen concluded by reminding us that steps were taken to improve formal and informal communications within the Department of Treasury.

The blue book, while very detailed, may have some minor and important facts missing from its final product. However, up to this point, I have heard nothing here that would lead me to believe that there was a coverup of the facts.

Remember, the blue book is still being praised by many inside and outside Washington for its frankness and detail.

Today we will wrap up the Treasury portion of the hearings as we hear from more ATF agents who participated in the raid and Secretary for Enforcement Ron Noble; the current ATF Director, John Magaw; the former head of the Secret Service. I want to—I want at this time to welcome our witnesses.

But in closing, I would like to go back to a few statements contained in Ms. Sparks' written testimony from Friday. Ms. Sparks stated that once the raid occurred, it was a certainty that the siege would end with a fire. She had taken the time to gather intelligence into Koresh's views. This is one important lesson that I hope has been learned by the Treasury Department.

In addition, however, Ms. Sparks said that we must address what has happened here, learn from it, and move forward. I agree completely with these sentiments, and I thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. MCCOLLUM. Thank you, Mrs. Thurman.

What you have just cited about Ms. Sparks and much of what she had to say was new, revealing, and had not come out before, and I thought it was interesting.

I am now going to bring forward our witnesses by introduction, and then after we've done that I will ask you all to stand, but not until after we've done it and swear you in as witnesses. The introductions, by the way, are not in the order that you are seated, so fear not. You are seated in the right places. It's just that my sheet is a little different from where you are.

First of all, we have Robert Rodriguez, ATF Special Agent. We have Chuck Sarabyn, former ATF Assistant Special Agent in Charge of the Houston office and tactical commander for the raid at Mount Carmel. We have Phillip Chojnacki, former ATF Special Agent in Charge of the Houston office and overall incident commander at Waco. We have with us today Sharon Wheeler, ATF Special Agent and public information officer on raid day. We have Dan Hartnett, former ATF Deputy Director for Enforcement. Daniel Black, an official in the ATF Personnel Office. Lewis C. Merletti, Secret Service Agent and Assistant Project Director of the Treasury Department review team. James Cadigan, FBI Special Agent and an expert in firearms. William Buford, ATF Resident Agent in Charge of the Little Rock office and commander of one of the Special Response Teams on raid day. Roger Altman, former Deputy Secretary of the Treasury, who could not be with us Friday. We're glad you're here with us today, Mr. Altman.

Now at this point in time, I would like to ask if each of you would rise, and I will swear you in under oath.

We have two names we didn't have in the introduction? Roland Ballesteros who was an ATF Agent at the time; and John Henry Williams, who also was an ATF Agent. I apologize for not having caught that.

If you would raise your right hand, please, gentlemen.

[Witnesses sworn.]

Mr. MCCOLLUM. Please be seated.

Let the record reflect that all of the witnesses answered in the affirmative.

Today we have a very large panel. We do not have a system for going through the process of having opening statements, and we go right to the questioners. The first person I'm going to recognize this morning on our side of the aisle is Mr. Chabot.

Mr. Chabot, you have 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

Mr. Merletti first. Sir, you have already testified that Agent Rodriguez, who was undercover at the time, warned Agent Cavanaugh and then Agent Sarabyn that David Koresh knew the raid was coming. Is that correct?

**STATEMENT OF LEWIS C. MERLETTI, ASSISTANT PROJECT DIRECTOR, DEPARTMENT OF THE TREASURY WACO ADMINISTRATIVE REVIEW TEAM**

Mr. MERLETTI. Yes.

Mr. CHABOT. And then Agent Sarabyn reported to Agent Chojnacki that Koresh knew they were coming, and both Sarabyn and Chojnacki, quote—and there is your quote, I believe—lied to their superiors and investigators about what Rodriguez had reported, correct?

Mr. MERLETTI. Correct.

Mr. CHABOT. In fact, Mr. Merletti, you went so far in your testimony last week as to suggest that the implication of your findings is that, in lying to investigators, Mr. Sarabyn and Chojnacki could be guilty of felony offenses.

Mr. MERLETTI. You said that, sir, yes.

Mr. CHABOT. I believe after looking at the documentation you agreed with that at the time?

Mr. MERLETTI. Yes.

Mr. CHABOT. In fact, you had 61 witnesses to support the findings that the agents had lied about those after the events, correct?

Mr. MERLETTI. Yes, sir.

Mr. CHABOT. Now, Mr. Black, I have some questions for you, sir.

As we know, the ATF proceeded with the raid even though the element of surprise was lost. Many people, including some very brave law enforcement officers, in fact, wound up dead. The Treasury report concludes—and I quote—Sarabyn and Chojnacki lied to their superiors about what Rodriguez had reported.

The Department, right up to the present moment, has never retracted that very strong statement, is that correct?

**STATEMENT OF DANIEL R. BLACK, DEPUTY DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. BLACK. That's correct.

Mr. CHABOT. And the report says that not only did Agents Sarabyn and Chojnacki lie, but that they also tried to shift blame to Mr. Rodriguez, who is also here this morning there, as a junior agent, and that they later altered documentary evidence.

Isn't it true, Mr. Black, that as a result of all this alleged misconduct, you, as the Deputy Director of the ATF, fired Agent Sarabyn and Agent Chojnacki by removing them from Federal service?

Mr. BLACK. That's correct.

Mr. CHABOT. You reviewed the Treasury report, you reviewed the testimony of all the witnesses, you met with both agents, and you decided to remove each of them from Federal service for four separate reasons, including intentionally making false statements. Is that correct?

Mr. BLACK. That's correct.

Mr. CHABOT. Now, your decision to fire these agents comes in some documents dated October 26, 1994, and I will ask that copies of your memos firing these men be distributed and that they be included in the record. So I would appreciate it if the clerk would have those distributed at this time. They are documents 24 and 25.

[The documents follow:]



DIRECTOR

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

OCT 26 1994

MEMORANDUM TO: Charles D. Sarabyn  
Assistant Special Agent in Charge  
Houston Field Division

FROM: Deputy Director

SUBJECT: Decision to Remove from Position and  
from the Federal Service

By memorandum dated February 4, 1994, Charles R. Thomson, who was then Acting Associate Director (Law Enforcement), notified you of his proposal to remove you from your position of Supervisory Criminal Investigator (Assistant Special Agent in Charge), GM-1811-15, and from the Federal service. This action was proposed in accordance with Chapter 75 of Title 5 of the United States Code and Part 752 of Title 5 of the Code of Federal Regulations, and was based on the following reasons:

- REASON 1: Committing a Gross Error in Judgment in Recommending that the Raid on the Branch Davidian Compound on February 28, 1993, be Allowed to Proceed After Receiving Information that the Raid Had Been Compromised.
- REASON 2: Making False Statements in the Course of a Criminal Investigation.
- REASON 3: Making Inconsistent and Misleading Statements to Investigators.
- REASON 4: Use of Poor Judgment in Making Alterations to the Raid Plan After the Texas Rangers Requested a Copy of the Plan.

This is the final decision on that proposed action. In reaching my decision, I have given full and careful consideration to all of the information relied upon and provided to you by the proposing official: the Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco and Firearms Investigation of Vernon Wayne Howell,

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Charles D. Sarabyn  
Assistant Special Agent in Charge

also known as David Koresh, dated September 1993, as well as certain documentation assembled by the Treasury Waco Review Team and relied on by them in preparing their report;<sup>1</sup> the notice of proposed removal; your written reply dated March 22, 1994; your oral reply, which you presented to me on March 24, 1994; and your written comments on the official summary of your oral reply, dated April 14, 1994. Based on all of this information, I find the following: Reason 1 is sustained, Reason 2 is sustained, Reason 3 is sustained, and Reason 4 is sustained. My decision is discussed specifically below.

I will not restate all of the specific details of your actions which led Mr. Thomson to propose that you be removed, as those details are fully presented in the proposal notice.

**REASON 1:** Committing a Gross Error in Judgment in Recommending that the Raid on the Branch Davidian Compound on February 28, 1993, be Allowed to Proceed After Receiving Information that the Raid had been Compromised--Sustained

I have fully considered the evidence relied upon by the proposing official and your oral and written replies. I find that the facts and reasoning outlined in the notice of proposed removal are fully supported by the evidence. Your arguments and supplemental documentation submitted in response to the proposal fail to dissuade me that your recommendation to the incident commander that the raid proceed represents a gross error in judgment, given the information you had before you at the time, and given the instructions you had from Headquarters.

As ASAC of the Houston Field Division, you participated in the final development of the tactical plan for the raid on the Branch Davidian Compound and in the presentation of that plan to Headquarters. You and SAC Chojnacki were the two individuals with ultimate responsibility for coordinating

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<sup>1</sup> You have raised several general objections to the body of evidence relied upon. I have considered your arguments and I do not find anything improper in the process by which these charges have been proposed and considered and I do not find that you have been in any way disadvantaged in your ability to respond to the charges.

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Charles D. Sarabyn  
Assistant Special Agent in Charge

the preparation for and execution of the planned operation. I find disingenuous your assertions in reply to your proposed removal that surprise and the men working outside in the pit were not, in fact, key elements of the plan. I am astounded by your suggestion that surprise is not an essential factor in executing a raid of this nature. In support of this premise you assert that the raid was going to be a "dynamic entry, not a dynamic/surprise entry." Yet you then proceed to define "dynamic entry" as "a sudden, vigorous and unexpected entry." Reply at-3 (emphasis added).

Your efforts at obfuscation also fail with respect to the importance of the men working in the pit. In your explanation of the plan to Headquarters, you emphasized the importance of the men working in the pit as a significant factor, in particular in response to questions concerning how ATF could safely execute the raid at 10 a.m. You admit in your reply that to serve the warrants safely, the guns had to be separated from the Branch Davidians who were capable of using them against the agents. You admit that surprise as to timing of the raid and activity in the pit were means of ensuring that the guns were kept separate. You imply that there were other means, but you suggest none. Indeed, no other means were part of the plan or appear to have been reasonably contemplated. In light of this, if, as you assert, by the time of the raid, you and others involved in the raid knew that in all likelihood the men would not be working in the pit, I am only further convinced of your gross inability to make the types of judgments critical to the position of a special agent and to the role you were assigned with respect to this operation.

I am convinced, that at the time you recommended proceeding with the raid, you knew that Koresh knew that ATF and the National Guard were coming. Your statements at the staging area confirm as much. Despite your suggestions that surprise was not a key element to the plan, you seek in your reply to persuade me that you did not know at the time that surprise was in fact lost because you did not know that Koresh knew the raid was imminent. Your assertions in reply are but additional variations of the several inconsistent statements you have made in the past about what you knew at the time. Nevertheless, in your written reply you admit that you understood Koresh's statement to be different than his usual statements about ATF because of his reference to the National Guard. You further acknowledge that Rodriguez told you that Koresh was nervous and agitated. You also

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Charles D. Sarabyn  
Assistant Special Agent in Charge

admit that you felt that "something was up." You knew that even if you started the raid ahead of schedule, more than 45 minutes would elapse from the time Rodriguez left the compound until the agents would reach it, ample time for Koresh to have distributed the weapons. Given what you admit you understood at the time, your belief that the raid could still be safely executed represents a gross error in judgment. At the very least, you should have recognized that the circumstances presented an unacceptable risk of violent confrontation. Your error represents a gross failure to properly analyze and process information to arrive at realistic conclusions. The safety of fellow agents and the public depends on such skills, and they are essential to the duties of a special agent and a supervisor. Your actions cause me to have no confidence that you can properly perform the functions of a special agent in the future, much less a supervisory agent.

You attempt to avoid being held accountable for this gross error in judgment by suggesting that others at the staging area or the undercover house, who knew of Rodriguez' report, did not voice objection to going forward. This argument does not persuade me that your recommendation was not a gross error in judgment, nor does it persuade me that others share the same responsibility. The silence of others does not equate with approval, much less agreement. Deference to the chain of command at a critical juncture in a law enforcement action may stifle individual doubts. Others did not occupy your key leadership position, nor were they privy to all of the information you had or should have had, and for which you were logically perceived by them to have had.

For the foregoing reasons, I fully sustain Reason 1. I further find that the charge warrants the penalty of removal and a lesser penalty would be inadequate. In reaching this conclusion, I have considered all appropriate factors, including the nature and seriousness of this conduct in relation to the duties and responsibilities of your position and to your years of experience.

**REASON 2: Making False Statements in the Course of a Criminal Investigation--Sustained**

I have fully considered the evidence relied upon and your replies to Reason 2 and find your arguments unpersuasive. The basis for the charge is fully articulated in the notice of proposed removal and I conclude that the notice is fully supported by the evidence relied upon. Nothing in your

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Charles D. Sarabyn  
Assistant Special Agent in Charge

replies causes me to question the conclusion of the proposing official that you were not being truthful when, in the course of a criminal investigation, you repeatedly told the Texas Rangers that Rodriguez had failed to clearly inform you that Koreash knew that ATF and the National Guard were coming and that if he had so informed you, you would not have proceeded with the raid. In your reply you acknowledge that your statements to the Rangers were incorrect. I conclude that your lack of truthfulness was intentional.

While admitting that your statements were not correct, you argue in reply that the statements were not false because there was no intent to deceive and because some time after your original statements, you corrected them in a supplemental statement to the Texas Rangers. Your supplemental statement to the Texas Rangers does not obviate the absence of truthfulness and candor you displayed in your interview. The supplemental statement does not provide a credible explanation for such significant misstatements of fact, nor does it fully correct the false statements. The supplemental statement does not cause me to doubt that, at the time of the interview, you intended to deceive the Texas Rangers.

I have seriously considered your arguments and documentation about trauma and stress as well as the lessons contained in the ATF training video on shooting reviews. I am not persuaded that your critical misstatements of fact were unintentional or symptomatic of post traumatic stress. Your statements to SAC Chojnacki and SAC Royster, your statements to others at the command post and the staging area, and your actions to hurry the raid ahead of schedule, unequivocally demonstrate that you clearly heard and understood Rodriguez' report that Koreash knew that ATF and the National Guard were coming. Your misstatements to the Texas Rangers reflect an intentional effort to deflect blame away from yourself for allowing the raid to go forward. I have no confidence that you will speak truthfully and with candor in future inquiries into events in which you might play a role. The Bureau must be able to have such confidence in all of its special agents and must know that an agent's credibility will not be called into question.

I fully sustain Reason 2. I have considered all appropriate factors in reaching a determination that the penalty of removal is the only appropriate penalty for the charge.

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Charles D. Sarabyn  
Assistant Special Agent in Charge

**REASON 3: Making Inconsistent and Misleading Statements to Investigators Regarding Your Conversation with Special Agent Rodriguez and Your Knowledge and Belief that the Raid had Been Compromised-- Sustained**

I have fully considered the evidence relied upon in the notice of proposed removal as well as your submission in reply relevant to Reason 3. The basis for the charge is fully and accurately set forth in the notice and I find that the charge is fully supported by the evidence replied upon. You do not deny making the statements at issue. However, you argue that others also made contradictory statements and that your contradictory statements resulted from stress and trauma. I find these arguments do not excuse the inconsistent and misleading statements at issue. I find that the particular statements at issue in this decision, taken together, represent a conscious effort on your part to avoid being held accountable for your actions on the day of the raid. As a highly trained and experienced investigator you are expected to accurately recall and truthfully recount your thoughts, actions, and observations in the course of critical events in which you are involved, even under very stressful situations. I have no confidence that you will report in the future with candor and veracity on events in which you are involved and in which you might be held accountable for some error. It is essential that an agent's credibility will not be called into question.

I sustain Reason 3 in its entirety. I have fully considered the record, including your replies, and all other appropriate factors in evaluating whether the penalty of removal from the Federal Service is the appropriate penalty for Reason 3. Given the nature and seriousness of your repeated inconsistent and misleading statements, your effort to avoid accountability for your actions, and the implication of your misstatements (e.g., to shift blame to a subordinate), I have no confidence in your ability to properly perform the duties of a supervisory or nonsupervisory special agent. A lesser penalty would not be adequate.

**REASON 4: Use of Poor Judgment in Making Alterations to the Raid Plan After the Texas Rangers Requested a Copy of the Raid Plan--Sustained**

I have fully considered the evidence relied upon and your replies relevant to Reason 4. I find that the evidence

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Charles D. Sarabyn  
Assistant Special Agent in Charge

relied upon fully supports the charge as articulated in the notice of proposed removal. Whether the document at issue is characterized as a "raid plan" or an "operational plan," whether the document was required under an ATF order or was merely a draft plan required under the newly signed but undistributed National Response Plan, are issues entirely irrelevant to the misconduct stated in Reason 4. Your exercise of poor judgment relates to the making of post-raid changes to a document which purported to set forth the plan and rationale for the raid and which you knew was to be provided to the Texas Rangers for use in their criminal investigation.

You acknowledge in your replies that you did in fact make changes in the document but state that your changes were limited to "pen and ink" changes to reflect the actual date of the raid. Other substantial changes were made to the document including narrative text and annexes, but you state that you cannot recall making any changes other than to the dates. Had you exercised the type of judgment expected of special agents of your experience, you would not have allowed changes in the document to be made (certainly not without noting on the face of the document that the changes were made after the raid). Given the significance of the event to which the document relates, your role in the operation, and the fact that you knew this document would be relied upon by the Texas Rangers, your error in judgment is particularly troubling. Your lack of judgment in this matter appears symptomatic of a pattern of conduct reflecting a greater concern for avoiding criticism than for accuracy.

Regardless of whether the changes were made with the intent to deceive, your judgment in altering the raid plan, which you knew was requested by the Texas Rangers, reflects the exercise of extremely poor judgment for a special agent with your experience and training. In addition, your efforts to minimize the importance of the document at issue and to shift responsibility to others (e.g., Agent Dyer) cause me to further question your integrity and judgment. I fully sustain Reason 4.

Standing alone, your error in relation to this charge would not necessarily warrant the penalty of removal. However, your actions viewed in the context of all four reasons at issue in this decision cause me to come to a different conclusion and compel me to conclude that removal is the only appropriate penalty.

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Charles D. Sarabyn  
Assistant Special Agent in Charge

In reaching my final decision to remove you from the Federal service based upon the four charges enumerated, both individually and together, I have considered many factors, including the ones specifically discussed above, as well as the following: the nature and seriousness of the offenses, and their relation to your position, including whether your conduct was intentional or repeated; your supervisory role and the prominence of your position; whether you have been disciplined in the past; your record of performance and length of service; the effect your behavior has had on your supervisors' confidence in your ability to do your job; consistency of the penalty with those imposed for similar offenses; the notoriety of your conduct and the impact of your actions on the reputation of the Bureau; the clarity with which you were on notice of the instructions or standards you violated; any mitigating circumstances; and the adequacy of alternative sanctions to ensure against such conduct in the future.

Based upon a weighing of these factors, I find that your removal from your position as Supervisory Criminal Investigator (Assistant Special Agent in Charge), GM-1811-15, Houston Field Division, Office of Criminal Enforcement, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms and the Federal service is warranted and necessary to promote the efficiency of the service. A lesser penalty would not be adequate.

Your removal from your position and Federal service will be effective on Friday, October 28, 1994.

You have the right to appeal this action to the Merit Systems Protection Board (MSPB) no sooner than the day after the effective date of this action and no later than thirty (30) calendar days after the effective date of this action. Your appeal must be made pursuant to the procedures contained in Part 1201 of Title 5 of the Code of Federal Regulations (C.F.R.). The procedures for appeal are found in the attached excerpt from Title 5 of the C.F.R. Your appeal should be addressed to:

Regional Director  
Dallas Regional Office  
Merit Systems Protection Board  
1100 Commerce Street, Room 6F20  
Dallas, Texas 75242

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Charles D. Sarabyn  
Assistant Special Agent in Charge

Your appeal should inform the MSPB that the records of your case may be obtained by writing to the Chief, Employee and Labor Relations Branch, Bureau of Alcohol, Tobacco and Firearms, ~~6~~ Washington, DC 20226. This will assist the MSPB in processing your appeal.

It is required that all petitions for appeal to the MSPB be in writing and set forth the reasons for contesting the adverse action. In addition, all of the information called for in Part 1201, Appendix I, must be provided. This information may, as indicated, be provided on the copy of the appeal form attached to this memorandum.

If you believe that prohibited discrimination based on race, color, religion, national origin, sex, age, or handicap is involved in this decision, you may wish to contact the Dallas Regional Office of Equal Opportunity (EO) at (214) . You may appeal to MSPB and have the allegation of discrimination be considered as part of the appeal, or pursue the matter under EO discrimination regulations, but not both. If you elect to file a complaint of discrimination, you must contact an EO counselor within forty-five (45) days after the effective date of this action.

  
Daniel R. Black

Attachments

00012751



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

OCT 26 1994

MEMORANDUM TO: Phillip J. Chojnacki  
Special Agent in Charge  
Houston Field Division

FROM: Deputy Director

SUBJECT: Decision to Remove from Position and  
from the Federal Service

By memorandum dated February 4, 1994, Charles R. Thomson, who was then Acting Associate Director (Law Enforcement), notified you of his proposal to remove you from your position of Supervisory Criminal Investigator (Special Agent in Charge), GM-1811-15, and from the Federal service. That action was proposed in accordance with Chapter 75 of Title 5 of the United States Code and Part 752 of Title 5 of the Code of Federal Regulations, and was based on the following reasons:

- REASON 1: Gross Failure to Properly Supervise ATF's Attempt to Serve Arrest and Search Warrants on the Branch Davidian Compound Outside of Waco, Texas, on February 28, 1993.
- REASON 2: Making False Statements.
- REASON 3: Attempting to Wrongfully Shift Responsibility to a Subordinate for Your Failure to Properly Supervise the Raid.
- REASON 4: Use of Poor Judgment in Allowing Alterations to be Made to the Written Raid Plan and Not Providing Notice of Such Alterations to the Texas Rangers and to the Department of the Treasury.

This is the final decision on that proposed action. In reaching my decision, I have given full and careful consideration to all of the information relied upon and provided to you by the proposing official: the Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco and Firearms Investigation of Vernon Wayne Howell,

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Phillip J. Chojnacki  
Special Agent in Charge

also known as David Koresh, dated September 1993, as well as certain documentation assembled by the Treasury Waco Review Team and relied on by them in preparing their report;<sup>1</sup> the notice of proposed removal; your written reply dated March 22, 1994; your oral reply, which you presented to me on March 24, 1994; and your written comments on the official summary of your oral reply, dated April 14, 1994. Based on all of this information, I find the following: Reason 1 is sustained, Reason 2 is sustained, Reason 3 is sustained, and Reason 4 is sustained. My decision is discussed specifically below.

I will not restate all of the specific details of your actions which led Mr. Thomson to propose that you be removed, as those details are fully presented in the proposal notice.

**REASON 1:** Gross Failure to Properly Supervise ATF's Attempt to Serve Arrest and Search Warrants on the Branch Davidian Compound Outside of Waco, Texas, on February 28, 1993--Sustained

Nothing you have presented in either your written or oral reply persuades me that the facts or reasoning outlined in the notice of proposed removal are erroneous. To the contrary, the evidence relied upon by the proposing official, and further reinforced by the content of your written and oral replies, convinces me that your decision to proceed with the raid represents a gross failure to properly supervise the planned action. This failure and your stated reasons for the decision cause me to have no confidence in your ability to perform the duties of a special agent, much less the duties of a supervisory special agent.

As the incident commander of the operation, you had the duty to responsibly supervise the execution of the warrants in a manner consistent with the plan (as presented to and approved by Headquarters), avoiding undue risks to the safety of the agents as well as to the safety of the occupants of the compound. Based upon the information you

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<sup>1</sup> You have raised several general objections to the body of evidence relied upon. I have considered your arguments and I do not find anything improper in the process by which these charges have been proposed and considered and do not find that you have been in any way disadvantaged in your ability to respond to the charges.

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Phillip J. Chojnacki  
Special Agent in Charge

admit you had before you at the time, you should have known that to go forward with the raid under such circumstances was inconsistent with the key elements of the plan and specific instructions from Headquarters, and posed an unacceptable risk of violent confrontation. Even if I were to accept your assertions that you did not know that the raid was compromised, you failed to provide any credible explanation for why you allowed the raid to proceed prior to the 10 a.m. time period established in the approved plan as the earliest time at which you could be confident that the men would be outside working, separated from the other occupants of the compound and from access to the arms.

To the extent that you claim you were "desensitized," and that the possibility of a "tip off" was "not fathomable" to you, such claims do not serve to mitigate my judgment of your conduct. To the contrary, it is not fathomable to me that you would not have seriously considered the possibility of a "tip off" in light of all of the facts and risks known to you at the time, and particularly given your negotiations with the Waco Tribune-Herald.

You state that you accept full responsibility for the raid decision, yet you repeatedly suggest that others bear responsibility for failing to raise objections to going forward or for failing to abort the raid. You seek to excuse your actions on the grounds that others allegedly did not recognize the import of Rodriguez' report either and that others were the experts. However, others did not have the same responsibility to be in full command of the operation as you had. Others did not have the responsibility to make the final decision whether to go forward. Others were not necessarily privy to the same scope of information and discussions of which you were or should have been cognizant. To the extent that you might have been ignorant of relevant information related to the operation, or ignorant of weaknesses in preraid planning or intelligence gathering, such ignorance represents failures in the quality of your supervision of the operation.

Your failure to fully evaluate the information available to you, your disregard of the key elements of the plan and instructions from Headquarters, and your efforts to shift responsibility to others, represent a gross failure to fulfill your responsibilities as the Special Agent in Charge of the Houston Field Division and incident commander of the operation. Accordingly, I sustain Reason 1 in its entirety.

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Phillip J. Chojnacki  
Special Agent in Charge

I have fully considered the record, including your replies, and all appropriate factors in evaluating whether the penalty of removal from the Federal service is the appropriate penalty for Reason 1. Given the nature and seriousness of your failure to properly supervise the operation, as discussed above, and your repeated suggestions that others bear responsibility, I have no confidence that you can properly perform the functions of a supervisory special agent in the future. These same reasons cause me to have no confidence in you as a nonsupervisory special agent. I conclude that no penalty less than removal is adequate for the charge specified in Reason 1.

**REASON 2: Making False Statements--Sustained**

I have fully considered the evidence relied upon by the proposing official and your replies to Reason 2. I find your arguments unpersuasive and lacking in candor and credibility. The basis for the charge is fully articulated in the notice of proposed removal and I find that the notice is fully supported by the evidence relied upon. Nothing in your reply causes me to question the conclusion that you were untruthful in your repeated statements to the Texas Rangers and to the Waco Review Team that you did not believe the raid had been compromised. I find entirely unpersuasive your efforts to explain why, if you did not believe the raid was compromised, you rushed ahead with the raid earlier than 10 a.m., the time set to surprise the Davidians. You and the other raid planners established this raid time as the safest because at 10 a.m. you believed the men would have begun working outside in the pit, separated from the firearms and the women and children.

You assert that the absence of dissenting voices in proceeding forward with the raid is confirmation of your view that you and others did not believe the raid was compromised. However, the fact that others involved in the raid did not at that time voice objections to going forward with the raid is not relevant to whether you knew or should have known that the raid was compromised. Further, the absence of vocal dissension is not evidence that others did not know that the raid was compromised. In fact, the material relied upon reveals that others recognized that the raid was compromised.

Your repeated statements reflect a conscious purpose to avoid the truth and to avoid being held accountable for your actions. I fully sustain Reason 2. I have considered all

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Phillip J. Chojnacki  
Special Agent in Charge

appropriate factors in determining whether the penalty of removal is appropriate to this charge. I conclude that a lesser penalty would be inadequate. Honesty and integrity are character traits essential to the positions of trust which special agents occupy. Your lack of candor in the aftermath of the raid makes it impossible to have confidence in your integrity in the future. It is essential that an agent's credibility will not be called into question. In light of the significance of the events that gave rise to this action, the seriousness of the offense, and the nature of the responsibilities of a special agent, the penalty of removal is appropriate to this reason alone.

**REASON 3:** Attempting to Wrongfully Shift Responsibility to Subordinate for your Failure to Properly Supervise the Raid--Sustained

I have fully considered the evidence relied upon and your replies to Reason 3. You admit that you made statements to the Texas Rangers which are quoted in the notice of proposed removal. I find unpersuasive your denial that the statements reflect an effort to shift blame to SA Robert Rodriguez. The statements at issue convey the impression that SA Rodriguez somehow contributed to your faulty decision to proceed. I am persuaded that this is the impression which you intended to convey. Indeed, I find disingenuous your assertion, proffered in response to this charge, that you have never tried to shift the responsibility for your actions to others. In your reply to each of the four reasons for your proposed removal, you repeatedly attempt to shift responsibility beyond yourself. I fully sustain Reason 3.

I agree with the proposing official that unfairly and inaccurately attempting to shift blame to a subordinate is one of the most serious breaches of trust a supervisor can commit. Supervisors and managers regularly receive credit for the hard work and heroic conduct of their subordinates. I am therefore particularly disturbed to find a manager attempting to avoid responsibility for his own errors by unfairly and inaccurately suggesting that a subordinate failed in some way. Such misleading statements reflect a lack of candor and an unwillingness to accept responsibility. They also cause me to lack confidence that you would respond truthfully and forthrightly in connection with official matters in the future. It is essential that an agent's credibility will not be called into question. For these reasons and after consideration of all appropriate

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Phillip J. Chojnacki  
Special Agent in Charge

factors, I find that the penalty of removal is the only appropriate penalty for this charge.

**REASON 4: Use of Poor Judgment in Allowing Alterations to be Made to the Written Raid Plan and Not Providing Notice of Such Alterations to the Texas Rangers and to the Department of the Treasury---Sustained**

I have fully considered the evidence relied upon and your replies to Reason 4. I find that the evidence relied upon fully supports the charge as articulated in the notice of proposed removal. Whether the document at issue is characterized as a "raid plan" or an "operational plan," and whether the document was required under an ATF order or was merely a draft plan required under the newly signed but undistributed National Response Plan, are issues entirely irrelevant to the misconduct stated in Reason 4.

Your exercise of poor judgment relates to the making of post-raid changes to a document which purported to set forth the plan and rationale for the raid and which you transmitted to the Texas Rangers for use in a criminal investigation, and later to the Waco Review Team, in response to a request for a copy of the raid planning documentation. You transmitted the documentation without providing oral or written notice of the post-raid changes. Written notice on the face of the document would have made clear to any subsequent reader that the document contained modifications made after the raid. You knew that the Texas Rangers and the Waco Review Team requested the documentation for use in the course of their respective investigations. Your lack of judgment in this matter appears symptomatic of a pattern of conduct reflecting a greater concern for avoiding criticism than for accuracy.

Regardless of whether the changes were made with the intent to deceive, your failure to advise the Texas Rangers and the Waco Review Team of the changes in the plan by oral and written communication, including notice on the document itself, reflects the exercise of extremely poor judgment for a special agent with your experience and training. Your efforts to minimize the importance of the document at issue and to shift responsibility to others (e.g., Agent Dyer) cause me to further question your integrity and judgment. I fully sustain Reason 4.

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Phillip J. Chojnacki  
Special Agent in Charge

Standing alone, your error in relation to this charge may not necessarily warrant the penalty of removal. However, your actions, viewed in the context of all four reasons at issue in this decision and after consideration of all appropriate factors, cause me to come to a different conclusion and compel me to conclude that removal is the only appropriate penalty.

In reaching my final decision to remove you from Federal service based upon the four charges enumerated, both individually and together, I have considered many factors, including the ones specifically discussed above, as well as the following: the nature and seriousness of the offenses, and their relation to your position, including whether your conduct was intentional or repeated; your supervisory role and the prominence of your position; whether you have been disciplined in the past; your record of performance and length of service; the effect your behavior has had on your supervisors' confidence in your ability to do your job; consistency of the penalty with those imposed for similar offenses; the notoriety of your conduct and its impact on the reputation of the Bureau; the clarity with which you were on notice of the instructions or standards you violated; any mitigating circumstances; and the adequacy of alternative sanctions to ensure against such conduct in the future.

Based upon a weighing of these factors, I find that your removal from your position as Supervisory Criminal Investigator (Special Agent in Charge), GM-1811-15, Houston Field Division, Office of Criminal Enforcement, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms, and the Federal service, is warranted and necessary to promote the efficiency of the service. A lesser penalty would not be adequate.

Your removal from your position and the Federal Service will be effective on Friday, October 28, 1994.

You have the right to appeal this action to the Merit Systems Protection Board (MSPB) no sooner than the day after the effective date of this action and no later than thirty (30) calendar days after the effective date of this action. Your appeal must be made pursuant to the procedures contained in Part 1201 of Title 5 of the Code of Federal Regulations (C.F.R.). The procedures for appeal are found in the attached excerpt from Title 5 of the C.F.R. Your appeal should be addressed to:

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Phillip J. Chojnacki  
Special Agent in Charge

Regional Director  
Dallas Regional Office  
Merit Systems Protection Board  
1100 Commerce Street, Room 6F20  
Dallas, Texas 75242

Your appeal should inform the MSPB that the records of your case may be obtained by writing to the Chief, Employee and Labor Relations Branch, Bureau of Alcohol, Tobacco and Firearms, [REDACTED] 4300, Washington, DC 20226. This will assist the MSPB in processing your appeal.

It is required that all petitions for appeal to the MSPB be in writing and set forth the reasons for contesting the adverse action. In addition, all of the information called for in Part 1201, Appendix I, must be provided. This information may, as indicated, be provided on the copy of the appeal form attached to this memorandum.

If you believe that prohibited discrimination based on race, color, religion, national origin, sex, age, or handicap is involved in this decision, you may wish to contact the Dallas Regional Office of Equal Opportunity (EO) at (214) [REDACTED]. You may appeal to MSPB and have the allegation of discrimination be considered as part of the appeal, or pursue the matter under EO discrimination regulations, but not both. If you elect to file a complaint of discrimination, you must contact an EO counselor within forty-five (45) days after the effective date of this action.

  
Daniel R. Black

Attachments

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Mr. CHABOT. I would like you to look at each of these memos—you don't have to read them completely, but they are copies that you have seen before—and I would ask that you confirm that you made these findings and signed these documents of removal.

Mr. SCHUMER. Excuse—will the gentleman yield? Can the minority side just get copies of these documents?

Mr. MCCOLLUM. Sure. If there are documents, let's be sure they get copies. They're being handed out now.

Mr. CHABOT. That is your signature.

Mr. BLACK. That's correct, those are the memos.

Mr. CHABOT. With regard to each man, you stated that you found that the charges warranted removal from Federal service and that, "a lesser penalty would be inadequate and that removal is necessary to promote the efficiency of the Federal service."

I assume you believed that when these memos were made and when you signed them, that that was true.

Mr. BLACK. That's true.

Mr. CHABOT. In fact, you made a number of harsh statements in both of these memos, but then when they contested their firings, you turned around less than 2 months later and signed voluntary settlement agreements reinstating each man to Federal service.

Despite having branded them as liars, despite having said that a penalty of less than removal would be inadequate, you reinstated them with back pay and benefits, and you even had the taxpayers pay for their attorneys' fees, and I believe the attorneys' fees approached around \$40,000, at least for Mr. Sarabyn's lawyer. That's all correct, isn't it?

Mr. BLACK. I'm not quite sure about the attorney fees. I know that's still being discussed.

Mr. CHABOT. You are not sure of the amount, but the fact was—

Mr. BLACK. I'm not sure of the amount.

Mr. CHABOT. Thank you. Now, one key question in all of this, Mr. Black, is why the ATF would ever rehire two agents who had lied and altered documents in such a tragic episode. You signed the settlement agreements along with legal counsel. Isn't it true, Mr. Black, that the decision to rehire these two, and to shut down the case in effect was made at a much higher level within the administration?

Mr. BLACK. No, that's not correct. That decision was made by myself and the Director of ATF.

Mr. CHABOT. You didn't talk to anybody higher than you?

Mr. BLACK. I did not talk to anybody higher.

Mr. CHABOT. What was it that Mr. Sarabyn and Mr. Chojnacki knew that people didn't want them talking about?

Mr. BLACK. I am not familiar with anything that they knew that people didn't want them talking about.

Mr. CHABOT. You were present, were you not, Mr. Black, in a meeting with Mr. Sarabyn and his lawyer on March 24, 1994, where Mr. Sarabyn gave his oral reply to your charges against him?

Mr. BLACK. Yes, I was.

Mr. CHABOT. We have been given documents that provide a summary of that meeting, and I ask unanimous consent that these documents be included in the record.

Mr. MCCOLLUM. Without objection.

[The documents follow:]

## MEMORANDUM OF INTERVIEW

PAGE: 2

FILE TITLE: [REDACTED]  
 INTERVIEWING AGENTS: FREDERICK R. ELARE

DATE: November 18, 1993  
 WACO ADMINISTRATIVE REVIEW

"During the briefing [REDACTED] stated the following in front of Austin agent personnel. 'I was told to lie about the element of surprise issue by Dan and Dan. The truth will come out. I have a wife and three children. I was afraid of losing my position. [REDACTED] then became emotional and began to cry.'"

ASAC [REDACTED] categorically denied that he had been told to lie and denied that he cried while at the meeting in Austin.

ASAC [REDACTED] described the events after the raid. He stated that he travelled back to the command post. He noted that it was chaotic and did not stay for very long. He stated that he returned to the area around the compound where SAC Mastin was one of the few agents there and he stayed there until late. After that he returned to the command post. He was aware that ASAC Cavanaugh was on the telephone with Koresh. ASAC [REDACTED] stated that he was on the phone until late while he spoke to SRT personnel.

On some date after the raid, ASAC [REDACTED] stated that he was questioned by Chief David Troy along with ATF SAs Wood and Benton before ATF discontinued their own internal inquiry. Following that he was questioned by ADL Hartnett and DADLE Conroy at the command post. ADLE Hartnett questioned him about two issues. First, "Didn't I say that we would hit the compound only if Koresh was in 'the pit'?" ASAC [REDACTED] stated that he explained that this condition was never discussed. Moreover, since the configuration of the compound was such that you could not tell if Koresh was in the pit. ASAC [REDACTED] stated that it appeared that his explanation of this satisfied ADL Hartnett. Secondly, ADLE Hartnett asked if ASAC Cavanaugh and someone else (name not provided) had instructed ASAC [REDACTED] to "call off the raid." ASAC [REDACTED] stated that he was really offended by this question. ASAC [REDACTED] stated that he explained to ADLE Hartnett that he rode in the front of the first truck that entered the compound. Further, he had a wife and family. ASAC [REDACTED] stated that he explained that he would not lead a group of agents into an ambush. Reportedly, ADLE Hartnett was not aware that ASAC [REDACTED] was in the truck.

ASAC [REDACTED] stated that he has never been asked by ATF to officially explain what happened on February 28th. ASAC [REDACTED] stated that he was told by SAC Chojnacki, [REDACTED], they are never going to believe this."

ASAC [REDACTED] observed that ADLE Hartnett micro managed everything. ASAC [REDACTED] was assigned the task of liaison with the FBI Hostage Rescue Team and was not asked to provide a briefing or an explanation to ADLE Hartnett except on one occasion (described above) when ADLE Hartnett accused him of leading the agents into an ambush.

ASAC [REDACTED] explained that there was one meeting (date un-recalled) that occurred over dinner at the Holiday Inn Restaurant in Waco. At this dinner was Chief Troy, ADLE Hartnett, SAC Chojnacki and ASAC [REDACTED]. At the

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## MEMORANDUM OF INTERVIEW

PAGE: 2

FILE TITLE: [REDACTED]  
 INTERVIEWING AGENTS: FREDERICK R. KLARE

DATE: November 18, 1993  
 WACO ADMINISTRATIVE REVIEW

meeting these agents told ADLE Hartnett that the press were "beating us to death." They all urged ADLE Hartnett to open up to the press and tell what happened. They explained that the agents wanted this to occur. ADLE Hartnett responded that the U.S. Attorney did not want ATF to do this. These agents reportedly presented the view that it was necessary to prepare a potential jury for ATF's account of the action as opposed to not having an opportunity to explain what happened. ADLE Hartnett responded that it was ATF's goal to put the Davidians in jail.

ASAC [REDACTED] was asked what he was prepared to suggest specifically to ADLE Hartnett in order to give the press. ASAC [REDACTED] stated that he was unprepared to say what should be given. He stated that he just wanted an opportunity to tell the press what SA Rodriguez said to him.

ASAC [REDACTED] was asked, knowing what he knew at the time, if he would do the raid again. ASAC [REDACTED] responded, "Yes, I would."

On Thursday, 07/01/93 ASAC [REDACTED] was briefly re-interviewed. He was questioned regarding the information provided by RAC [REDACTED] during his interview on Friday, 06/25/93. At that time RAC [REDACTED] stated the following:

"The day before Steve Willis' funeral, [REDACTED] saw [REDACTED] sitting in a room and he appeared to be more nervous than usual. His legs were moving rapidly and the legal pad he had on his lap was in danger of falling. [REDACTED] went over to him and asked him if he was alright. [REDACTED] said, 'Uh uh, what what'. This was a common response from Sarabyn, but [REDACTED] still felt like something was wrong. Lewis told [REDACTED] to come take a drive with him because he didn't think that [REDACTED] was alright. When [REDACTED] asked him what was wrong, [REDACTED] said that he had had a meeting with Hartnett and Hartnett had accused him of lying to him and had berated him and had generally shouted at him. [REDACTED] said, 'I guess they found their scapegoat.' Later when [REDACTED] dropped him off at his house, he said [REDACTED] looked like a 'beaten man' walking up to his house."

ASAC [REDACTED] stated that this information was correct. He stated that the incident with ADLE Hartnett was the one he described during the previous interview (reported above) where ADLE Hartnett questioned him on two issues about the raid.

ASAC [REDACTED] offered no additional relevant information during interviews.

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Mr. CHABOT. Isn't it true that Mr. Sarabyn's lawyer told you that to that point Mr. Sarabyn had honored a, "gag order" imposed by Director Magaw, but that if he was removed from the Federal service he would talk, and that notes, including Mr. Noble's notes, would be made public, and that, "Treasury doesn't need this and ATF doesn't need this." Isn't that what the lawyer said?

Mr. BLACK. I recall the lawyer saying something to that effect, but I am not aware of any gag order.

Mr. CHABOT. Isn't it also true that the lawyer for Mr. Chojnacki said basically the same thing?

Mr. BLACK. That's correct.

Mr. CHABOT. In any event, Agent Chojnacki himself told you that he has another side to the story that has not come out but that he believed that it was in the best interest of the BATF not to go forward with his story. He mentioned a specific incident, and he stated that the most critical part of the incident was witnessed by himself, Cavanaugh, Sarabyn, and Royster, and he said, "the successful prosecution of the Branch Davidians is all they have left to offer." And I ask you, Mr. Black, what did they know that, in their view, could have undermined the prosecution and that they would keep quiet about if they were rehired? You don't know what that is?

Mr. BLACK. I don't know what that is, no, sir.

Mr. CHABOT. My time has expired.

Mr. MCCOLLUM. Mrs. Thurman, I understand you want me to yield to Mr. Schumer. Is that correct?

Mrs. THURMAN. Yes.

Mr. MCCOLLUM. Mr. Schumer.

Mr. SCHUMER. Thank you very much.

And I guess there are two key issues here today. One is the element of surprise and what happened. The second is who fired first. And, to me, the second issue is probably—is certainly the number one issue that faces the entire day today, and I would like to get some statements about that on the record even though we went over it a little bit last week.

First I would like to address questions to Agent Buford.

You testified last—first of all, is it true, sir, that you were the team leader and you were right on the front lines the morning of the raid?

**STATEMENT OF WILLIAM BUFORD, RESIDENT AGENT IN CHARGE, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, LITTLE ROCK, AR**

Mr. BUFORD. That's correct, sir.

Mr. SCHUMER. And that you ascended, the pictures we see going up the roof and trying to get into the room with the guns, you were one of the people on that ladder.

Mr. BUFORD. Yes, sir.

Mr. SCHUMER. And you were wounded that day as well; is that correct?

Mr. BUFORD. Yes, sir.

Mr. SCHUMER. OK, sir, who do you think fired the first shot?

Mr. BUFORD. To the best of my knowledge, the first shots I heard fired were coming from the inside of the building to the outside fired by other than ATF agents.

Mr. SCHUMER. And how do you know it was other than ATF agents?

Mr. BUFORD. I could tell by the type of weapons that I heard shooting, the 50-caliber weapons, the AK-47's. We had no 50 calibers. We had no AK-47's.

Mr. SCHUMER. Do you have any doubts that you were fired on first?

Mr. BUFORD. To the best of my knowledge, no, I have no doubt.

Mr. SCHUMER. Thank you. And would you describe what happened? Could you describe it as sort of an ambush?

Mr. BUFORD. It was definitely an ambush, a very well planned ambush, I believe. The firing was from, it appeared to me as though nearly every window along the front of the building.

Mr. SCHUMER. I see. So it wasn't just one or two people firing but a large number.

Mr. BUFORD. A large number, yes, sir.

Mr. SCHUMER. OK. Thank you, Mr. Buford.

And I'd like to now ask Mr. Williams some questions.

Mr. Williams, you were one of Mr. Buford's team. Is that correct?

**STATEMENT OF JOHN HENRY WILLIAMS, SPECIAL AGENT,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. WILLIAMS. No. I was on the Houston team.

Mr. SCHUMER. The eastern team?

Mr. WILLIAMS. Houston. The Houston, TX, team.

Mr. SCHUMER. Oh, the Houston team.

Mr. WILLIAMS. Yes.

Mr. SCHUMER. But you were also on the front lines that morning; is that correct?

Mr. WILLIAMS. Yes, I was.

Mr. SCHUMER. Who do you believe fired the first shot?

Mr. WILLIAMS. From all indications, it came from the inside as we approached the front door.

Mr. SCHUMER. And would you describe what happened to you and the other agents as an ambush?

Mr. WILLIAMS. Yes, I do.

Mr. SCHUMER. Were you kind of shocked that people, when you were serving a warrant, would fire back in such—with such firepower?

Mr. WILLIAMS. I was stunned from all the firepower that came from outside—from the compound.

Mr. SCHUMER. OK. How do you—why do you believe with such certainty that you fired—that the other side, that the people inside the compound, Koresh's people, fired first?

Mr. WILLIAMS. My assignment that day was to enter the front door. As we approached the front door, David Koresh came to the front door dressed in black cammo fatigues.

As he closed the door, before we reached the door, one agent reached the door, and at that point that is when the doors erupted with gunfire coming from inside. It was 10 seconds or more before we even fired back.

Mr. SCHUMER. Did there appear to be any coordination, the shooting from inside, or was it just random?

Mr. WILLIAMS. There was coordination, and they were shooting through the windows, through the walls, everywhere.

Mr. SCHUMER. Did you see any agents shot?

Mr. WILLIAMS. Yes, I did.

Mr. SCHUMER. OK. And did you hear any voices from one of the walkie-talkies inside the compound sort of directing how and where the fire ought to be?

Mr. WILLIAMS. Yes. Later on they had walkie-talkies which pinpointed any—any time any agents outside moved, they would relay that we had one moving in the back, pinpointing every agent position on the compound.

Mr. SCHUMER. Thank you, Mr. Williams; and, again, I think all of us appreciate your bravery.

I want to ask any member of this panel, does any member of this panel—and I know you all have different views on the aspect of secrecy and surprise and who knew and when, but on the crucial issue of who shot first, does anyone—and raise your hand by indicating so the record could show—does anyone believe that ATF fired first? Please raise your hands.

Do all of you believe that the first shots were fired from within the compound? If you believe that the case, please just raise your hand.

[Show of hands.]

Mr. SCHUMER. Let the record show that every—every member here on the panel, I believe, with the exception of Mr. Cadigan, has raised his or her hand in believing that the shots were fired first by Mr. Koresh.

And, Mr. Cadigan, could you explain why you didn't raise your hand?

#### **STATEMENT OF JAMES CADIGAN, FIREARMS EXPERT, FEDERAL BUREAU OF INVESTIGATION**

Mr. CADIGAN. Yes, sir. I wasn't there.

Mr. SCHUMER. You weren't there?

Mr. CADIGAN. Yes, sir.

Mr. SCHUMER. Don't have an opinion one way or the other?

Mr. CADIGAN. No, sir.

Mr. SCHUMER. Thank you, Mr. Cadigan. You got me worried there for a moment.

OK, let me then go back to Mr. Buford. Just a final question, because I think you touched all of us, Mr. Buford, when you mentioned last week how you felt after going on this raid and finding your agency so criticized for it when you were just doing your duty.

If you were on this side of the table and had the opportunity to ask questions or had the opportunity to bring out anything that hasn't been brought out, what would you—what kind of questions would you ask? What would you bring out?

Mr. BUFORD. I think it would be important for everyone to know one of the things that you just brought up, that they did in fact fire first, that we were in fact ambushed, and I think the thing that has bothered me a lot is that it seems as though many people think that we went into that situation without any concern for those children, and our main concern in conducting this raid the way we did was concern for those children.

Had we have gone to a siege-type operation, I was convinced in my mind that all of those children would be murdered, as they were, and if we were successful with the type of entry we were trying to do and were able to neutralize the people on the inside, that no one on either side would be hurt, and that's what we were striving for.

We even took extraordinary measures to make sure that we had people there to take care of the children after the situation was neutralized and were even going to bring Happy Meals out for all of the children from McDonald's once we got them outside of the compound.

Mr. SCHUMER. Thank you. The final point——

Mr. MCCOLLUM. Thank you, Mr. Schumer. Your time has expired.

Mr. SCHUMER. would you please reserve that point?

Mr. SCHUMER. I guess I don't have much choice.

Mr. MCCOLLUM. Mr. Buyer.

Mr. BUYER. One quick comment before I yield on, I think, what Mr. Schumer was doing, laying down the predicate of sort of an ambush gives a fairly accurate scene, and that's why the importance of the element of surprise, that once that was removed, that's why you shouldn't have been surprised that there was an ambush. That's why we're going through this process.

And, you know, this isn't just serving a warrant. This isn't a Federal marshal going up, knocking on the door, and saying, are you so and so, I have a warrant, when we have 75 agents in a dynamic entry, going to lay down discriminating fields of fire, children present. We've got Federal agents with the 9 millimeters, AR-15's, MP-5's, and 2-shot repeaters. But look also at the firepower you are going up against. So this isn't just going to the door and saying, I am going to serve a warrant.

Let me yield to Mr. Chabot the remaining balance of my time.

Mr. CHABOT. Thank you.

I will ask that documents 22 and 23 be distributed to Mr. Chojnacki and to the minority.

[The documents follow:]



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

APR - 5 1994

MEMORANDUM TO: Special Agent Charles D. Sarabyn  
FROM: Deputy Director  
SUBJECT: Summary of Oral Reply

Attached is the official summary of your oral reply to the notice of proposed removal issued by Associate Director (Law Enforcement) Charles R. Thomson.

I am sending this summary to give you an opportunity to submit to me any changes (additions, deletions, or corrections) that you wish to have incorporated into the record. Your changes, if any, should be sent so that I receive them no later than Friday, April 15, 1994.

  
Daniel R. Black

Attachment

cc: Gail M. Dickenson, P.C.  
[REDACTED]  
Dallas, Texas 75226

00012758

This is the official summary of the oral reply given by Charles D. Sarabyn, Assistant Special Agent in Charge (ASAC), Houston Field Division, on Thursday, March 24, 1994. The reply was given in response to a proposed removal issued by Acting Associate Director (Law Enforcement) Charles R. Thomson on February 4, 1994. Present at the reply were ASAC Sarabyn; Gail M. Dickenson, P.C., ASAC Sarabyn's designated representative; Deputy Director Daniel R. Black, the deciding official; Michelle Davis King, Esq., ATF Attorney; Barbara L. Wear-Bieger, Employee Relations Specialist; and M.J. Wilkins, Employee Relations Specialist. The oral reply began at 2:10 p.m.

#### SUMMARY

Mr. Black opened by telling ASAC Sarabyn that this oral discussion was his opportunity to tell his side of the facts upon which the proposed removal was based. He advised that on the previous day he had received the written reply and attachments thereto and that he had gone through most of it.

Ms. Dickenson stated that she would summarize what was in the narrative letter (written reply), going over certain portions and adding where necessary.

Ms. Dickenson stated that there was a real problem with the procedures that had been used by the agency in proposing the action, from ASAC Sarabyn's standpoint, for Mr. Black as the deciding official and for the agency, in terms of the materials initially given to ASAC Sarabyn with the proposal notice--the material relied upon. She stated that the material consisted of selected statements that had been given and only selected portions of those statements. She stated that while an agency may rely on an investigation in proposing an adverse action, an agency may not rely only on selected portions of an investigation to support an adverse action.

Ms. Dickenson stated that the problem from an adverse action standpoint is that the Treasury report relied upon by the proposing official consists of conclusions and those conclusions will not support an adverse action charge. The memoranda of interviews in the Treasury Review Report that were relied on by the proposing official were not sworn statements, they had not been reviewed for an opportunity to make corrections, and they had not been signed. Rather, the memoranda consisted of the opinions of the reviewers of what had been said by those interviewed and what those interviewed had meant to say.

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## Summary of Oral Reply - Charles D. Sarabyn

Ms. Dickenson stated that "we" know that the statements are not accurate from other documents they have been given and from what they have been told. Some of the statements relied upon were strongly inaccurate, but none of them were perfect. She stated that the statements in the Treasury Review Report are a characterization of what people said and that the method of characterizing them make them read more like a partisan briefing than reports of interviews for an investigation.

Additionally, Ms. Dickenson stated that they had been furnished with some of the underlying documentation that had led to the conclusions of the Treasury review team--memoranda of interviews made by the Treasury review team and the Texas Rangers' interviews. She stated that while the Texas Rangers had not conducted their interviews under oath, while they had not been signed and while some of them had not been reviewed by those interviewed, they were more reliable because they had been recorded in question and answer form. This was not the case with the memoranda of interviews in the Treasury Review Report, i.e., there was no documentation of the questions that had been asked of those interviewed.

As an example of the problem with the memoranda of interviews, Ms. Dickenson compared the summarization of ASAC Sarabyn's interview with that of Special Agent (S/A) Robert Rodriguez's interview. Both had been interviewed for 3 days. However, ASAC Sarabyn's interview resulted in a 26-page memorandum of interview while S/A Rodriguez's interview resulted in a 9-page memorandum of interview. Ms. Dickenson stated that in order to make a fair decision, Mr. Black needs all memoranda and notes of interviews; otherwise, his decision would have to be based upon conclusions and not the evidence. She stated that it was unfair to Mr. Black as the deciding official to have to make a decision without having received all of the data that was used to reach the conclusions.

Ms. Dickenson then went to Reason 1 - "Committing a Gross Error in Judgment in Recommending that the Raid on the Branch Davidian Compound on February 28, 1993, be Allowed to Proceed After Receiving Information that the Raid had been Compromised."

Ms. Dickenson stated that ASAC Sarabyn had never received information that the raid could not be carried out safely. ASAC Sarabyn's first priority was to serve the warrant safely. In order to serve the warrant safely, the men in the compound needed

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## Summary of Oral Reply - Charles D. Sarabyn

to be separated from the guns. One means of keeping the men and the guns separate was to use the element of surprise, i.e., go in at a time when there was activity in the pit. The intelligence that ATF had was that the guns were locked up in the armory or in Mr. David Koresh's room during the day. Thus, with the men working in the pit and the guns in another place, it would be safe to go ahead with the raid.

Ms. Dickenson said that it was a misstatement that the two key elements were whether or not the men were in the pit, and thus separated from the guns, and the element of surprise. The focus was safety. She said that the point to consider was ASAC Sarabyn's thought process at the time he received the information from S/A Rodriguez, that Mr. Koresh had said that ATF and the Guard were coming. Mr. Koresh made such statements about ATF coming all of the time, repeatedly, although he had never before said that the Guards were coming. The question for Mr. Koresh was not whether ATF would show up at his door; the question was when. But, still, on the morning of February 28, the question for ASAC Sarabyn was did Mr. Koresh know that ATF was coming then, or right now.

Ms. Dickenson stated that ASAC Sarabyn did not believe that Mr. Koresh knew that ATF was coming "right now." ASAC Sarabyn believed that ATF could still safely serve the warrants. ASAC Sarabyn rode in the front seat of the vehicle going onto the compound. He would not have risked his own life or the lives of other agents if he had not believed that the task could be performed safely.

Ms. Dickenson stated that the belief that the raid could go forward safely was shown by the actions of other raid commanders. Theodore Royster, then the Special Agent in Charge (SAC) of the Dallas Field Division, knew everything that ASAC Sarabyn knew that morning. SAC Royster was with ASAC Sarabyn when the decision was made to go forward, and could have called the raid off but did not.

In addition, SAC Peter Mastin of the New Orleans Field Division and the Deputy Incident Commander for the raid, could have called the raid off. SAC Mastin was in the staging area when S/A Sarabyn came to the area and told them what S/A Rodriguez had said about Mr. Koresh's statement that ATF and the Guard were

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## Summary of Oral Reply - Charles D. Sarabyn

coming. SAC Mastin recalled ASAC Sarabyn saying that they needed to know whether or not Mr. Koresh knew they were coming. SAC Mastin did not hear or know how ASAC Sarabyn had interpreted S/A Rodriguez's remarks, but he did hear that Mr. Koresh knew they were coming. Although he had the potential and authority to stop the raid, SAC Mastin made no attempt to do so.

Another person who could have stopped the raid, according to Ms. Dickenson, was James Cavanaugh, then the ASAC of the Dallas Field Division and the raid's Deputy Tactical Coordinator. ASAC Cavanaugh knew more than ASAC Sarabyn. ASAC Cavanaugh heard what S/A Rodriguez had to say when he returned to the undercover house; he knew that the mailman had talked with a person from the media; he knew that after speaking with the media person the mailman then returned to the compound and he knew that media vehicles had been travelling up and down the road. ASAC Cavanaugh did not convey this information to ASAC Sarabyn.

Ms. Dickenson stated that the Treasury Review Report said that ASAC Cavanaugh was in the best position to make a determination as to whether or not to go forward, since he had the most information. ASAC Cavanaugh had an open line to SAC Phillip Chojnacki and he was in constant contact with the forward observers who were watching the compound from the undercover house. With the open line, ASAC Cavanaugh had an opportunity to tell SAC Chojnacki if they should not go forward with the raid. He voiced no concerns to SAC Chojnacki about going forward. ASAC Cavanaugh also had the independent authority to call the raid off himself, but he did not even raise the question that he felt it necessary to discuss the situation with another raid commander.

ASAC Sarabyn stated that ASAC Cavanaugh says that he (Cavanaugh) called the command post and told someone about the press presence, but no one at the command received such a call. Later, ASAC Cavanaugh was not sure that he had made the call.

Mr. Black asked, "What you are saying in defense of the first charge, if an error in judgment was made, then more than Chuck was responsible--Cavanaugh, Mastin and Royster all made an error in judgment, or since all agreed to go forward, there was no error in judgment?"

Ms. Dickenson stated that she was saying that there was no error in judgment based upon the facts available at the time. No one who could have called the raid off said "we have been compromised, we can't do it safely, let's stop it at this point."

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## Summary of Oral Reply - Charles D. Sarabyn

Ms. Dickenson stated that ASAC Sarabyn accepts the responsibility for the decision to go forward with the raid, that he always has. In retrospect, it was the wrong decision, but it was not a gross error in judgment to recommend that the raid go forward. At the time, ASAC Sarabyn believed that it was safe to go forward. It has been noted that the ATF personnel had not had sufficient training for such an assignment. However, when ASAC Sarabyn was given the assignment, in view of the lack of training, he drew on the training and experience he had had and did the best job he could.

Ms. Dickenson then went to reason 2 - "Making False Statements in the Course of a Criminal Investigation."

Ms. Dickenson stated that the specific charge is that ASAC Sarabyn made false statements when he was interviewed by the Texas Rangers on March 25, 1993. She stated that the statement ASAC Sarabyn made was not correct, but that does not make it false. To be a false statement, a statement has to be made with the intent of deceiving the person to whom the statement is made, and ASAC Sarabyn did not intend to deceive.

Ms. Dickenson stated that incorrect does not equal false. In this case, the element of intent to deceive is missing and without that element, we do not have a false statement. We have a wrong statement but not a false statement. The same thing is true with the next charge, making misleading and inconsistent statements.

Ms. Dickenson stated that she would like to make clear to Mr. Black that he should consider the traumatic situation that ASAC Sarabyn had been in when he made the statement on March 25 and the statements he made subsequent to that date. A traumatic event had occurred and was still occurring to ASAC Sarabyn. It is completely logical and consistent that he would have a lapse of memory, that he could not recall exactly what had happened. ASAC Sarabyn had been involved not only in the pre-raid planning and the traumatic shootings of February 28, but also he continued in Waco for the next 6 weeks.

Ms. Dickenson stated that during those 6 weeks, ASAC Sarabyn worked at least 16 hours 7 days a week with his attention focused on Mr. Koresh, still in the compound. ASAC Sarabyn was dealing with Mr. Koresh on a daily basis, a man who had murdered four agents. ASAC Sarabyn was present on the compound when the

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## Summary of Oral Reply - Charles D. Sarabyn

shooting started; while his co-workers were being killed and wounded; when Agent King was calling for help. S/A King had been shot and fell off the roof and lay in an area where ATF agents could not get to him and help him. ASAC Sarabyn heard S/A King begging for help, saying that he was dying, while he (ASAC Sarabyn) was trying to figure out what they could do for S/A King, i.e., should he have other agents risk their lives to help him.

Ms. Dickenson said that they were not minimizing the trauma that every agent went through on February 28, but other agents were allowed to go home when the Federal Bureau of Investigations (FBI) and the shooting review teams came. ASAC Sarabyn stayed in Waco for the next 6 weeks working continuously; he had no chance to recover before being questioned by the Texas Rangers.

Ms. Dickenson stated that the fact that one statement contradicts another does not mean they are false.

Ms. Dickenson urged Mr. Black to look at a 30-minute videotape regarding the effect that a traumatic event can have on people. She stated that the points made on the videotape are summarized in the written response. She said that the experiences described in the videotape following a traumatic event are exactly the same experiences the ATF agents faced following the traumatic event of February 28.

Ms. Dickenson pointed out that other agents who were interviewed also had changes, sometimes significant changes, between original interviews and subsequent interviews.

Ms. Dickenson then went to reason 3 - "Making Inconsistent and Misleading Statements to Investigators Regarding Your Conversation with Special Agent Rodriguez and your Knowledge and Belief that the Raid had been Compromised."

Ms. Dickenson stated that ASAC Sarabyn's statements may have been inconsistent, but it was hard to tell, because the memoranda of interviews are themselves so inaccurate. She said that even if there are inconsistent statements, there was no intent on ASAC Sarabyn's part to mislead anybody.

Ms. Dickenson questioned whether an agency can base a charge on inconsistent statements where there is no intent to mislead. She stated that it does not seem worth taking an action for that reason. She stated that she has a real conceptual problem about taking any action for such a reason, much less a removal action.

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## Summary of Oral Reply - Charles D. Sarabyn

Ms. Dickenson stated that with an "inconsistent and misleading" charge both the inconsistent charge and the misleading charge have to be proven. She did not see how anyone could look at the statements and say that ASAC Sarabyn had misled them.

Ms. Dickenson again pointed out that there were a number of inconsistent statements by others. She stated that ASAC Cavanaugh shifted and that SAC Royster changed his statements. She stated that she was not criticizing anyone for inconsistency, but with an operation of this size, with these tragic results, there will be inconsistent statements. She did not find the inconsistent statements in this case surprising.

Mr. Black stated that he understood the issue of trauma and all that went on. He realized that there could be misleading and inconsistent-type statements when one is being asked a variety of questions. But this issue gets down to one thing - what was in ASAC Sarabyn's mind when he went ahead with the raid. Did he think that Mr. Koresh knew ATF was coming or not.

Mr. Dickenson responded that that was the one statement that is not inconsistent and the agency did not charge ASAC Sarabyn with that. She stated that from the beginning ASAC Sarabyn said he did not know that Mr. Koresh knew ATF was coming "then." ASAC Sarabyn thought they could safely conduct the search warrant. He was trying to explain, to make someone understand the difference. ASAC Sarabyn knew that Mr. Koresh expected ATF to come some time, but he did not feel Mr. Koresh knew that ATF was coming "now" or "then." People have interpreted ASAC Sarabyn's statements incorrectly.

With respect to ASAC Sarabyn's staying in Waco longer than others, Mr. Black asked if that was his choice.

ASAC Sarabyn stated that he had been given various assignments by then Associate Director (Law Enforcement) Daniel M. Hartnett and that he was required to stay for the 6-week period.

Ms. Dickenson then went to reason 4 - "Use of Poor Judgment in Making Alterations to the Raid Plans after the Texas Rangers Requested a Copy of the Plan."

Ms. Dickenson stated that the problem with this charge from the agency's standpoint is that there was no raid plan. A raid plan for the Waco raid was never done. Without a raid plan, there was nothing to alter.

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## Summary of Oral Reply - Charles D. Sarabyn

Ms. Dickenson stated that she assumed the agency was trying to charge that there was a change to the operational plan which was prepared by ASAC Darrell Dyer, Kansas City Field Division, who was also the Administrative Coordinator for the raid. This operational plan was not a required document.

Ms. Dickenson stated that in preparing the operational plan, ASAC Dyer was trying to follow the guidelines in the National Response Team (NRT) plan. He was trying to find out how it would work in a real life situation.

ASAC Sarabyn stated that as of February 1993, an operational plan became a requirement for raids. However, the draft reflecting that requirement did not get to field offices until March 1993.

Ms. Dickenson reiterated that this was an operational plan, not a raid plan, and no one thought that it was an official document. She stated that ASAC Dyer, who was the author of the operational plan, made changes to it before it was given to the Texas Rangers. The people working on the operational plan knew the draft for what it was, but they were going to give it to the Rangers to let them know what was going on or what they had planned for the twenty-eighth.

ASAC Sarabyn said that he saw the operational plan as a guide to assist the Rangers with their investigation, nothing else. He said that he did not know how the review team got so confused on this issue.

Mr. Black asked ASAC Sarabyn if he was saying that the document on which the changes were made was an operational plan and not a raid plan and asked the difference between the two.

ASAC Sarabyn stated that a raid plan is something that is written up with, among other things, the specific assignment for each member of the raid team. This operational plan was a working draft for which ASAC Dyer used the NRT plan to develop. In drawing up the plan, ASAC Dyer also got a military plan and decided to include tactical information in the operational plan.

Ms. Davis-King asked if there would normally be two documents--an operational plan and a raid plan.

ASAC Sarabyn responded that there could be two plans, but a raid plan is still a raid plan. On this occasion, they had just the operational plan into which ASAC Dyer also put tactical

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## Summary of Oral Reply - Charles D. Sarabyn

information, but at that time the operational plan was not required. With the timing of the raid being pushed up 24 hours, there was no time to prepare a raid plan.

Mr. Black stated that if an outside third-party came in and asked for a plan, the operational plan was the only plan that had been committed to paper.

ASAC Sarabyn said that although he had talked with ASAC Dyer before he (Sarabyn) went to Ft. Hood, he never saw the operational plan before the raid. He said the dates were changed on the operational plan before it was given to the Rangers to make the plan more accurate for them.

Ms. Dickenson stated that the order requiring an operational plan had not become final at the time of the raid on the Davidians. If one looked back at previous raids, one would not find two plans. While the order may have been signed before February 28, it did not go to the field until March.

ASAC Sarabyn said that some of the individual ATF Special Response Teams (SRTs) had raid plans for their individual duties on the twenty-eighth and repeated that because the raid was moved up one day, there was no time to write up an overall raid plan.

Ms. Dickenson stated that concluded their reply to the charges.

Mr. Black went back to Ms. Dickenson's earlier statement that ASAC Sarabyn's 3-day interview resulted in a 26-page Memorandum of Interview and S/A Rodriguez's 3-day interview resulted in a 9-page Memorandum of Interview. He asked if she meant that there was something missing from the S/A Rodriguez's statement.

Ms. Dickenson responded that when somebody is interviewed for 3 days, you get 3 days worth of information. Otherwise, the interview would be concluded at the end of 1 day. Nothing, including one individual speaking slower than another, would account for the extensive difference between these two interviews. Ms. Dickenson repeated that the tone of the memoranda of interviews in the Treasury Review Report is more like a partisan briefing and that Mr. Black was in a bad position having to work from those statements.

ASAC Sarabyn stated that they had not been provided with the notes that had been taken during the interviews and he believes that they were summarized as the reviewers wanted them to be.

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## Summary of Oral Reply - Charles D. Sarabyn

ASAC Sarabyn referred to his statement about lie detector tests. He stated that the memorandum of interview makes it appear like this was one continuous conversation, but actually the conversations about lie detectors were 1 day apart. He stated that the notes taken during the interview would show things in the order in which they occurred. Instead, the interviewers interpreted what people said and then the reviewers interpreted those notes.

Mr. Black again asked if they assumed something was missing from S/A Rodriguez's statement since the summary of his interview was so much shorter than the summary of ASAC Sarabyn's interview.

Ms. Dickenson responded that they did not know, but she found it curious that they would continue to interview an individual if they were not getting additional information. If they were getting the same information over the 3-day period, the memorandum of interview should have reflected that. The fact that they (Dickenson/Sarabyn) had almost no evidence makes it impossible to tell whether anything is missing from S/A Rodriguez's interview.

Ms. Dickenson stated that ASAC Sarabyn had been harshly criticized by the media since Waco. There have been many reports that were not based on the facts. ASAC Sarabyn has not responded to the media reports but has respected the Treasury gag orders; he has kept quiet while his character and abilities have been attacked.

Mr. Black asked who had told ASAC Sarabyn not to talk to the press.

ASAC Sarabyn said that the orders came from Treasury, ATF, and the U.S. Attorney. He stated that Director Magaw was the only ATF official who could speak on Waco, at least until after the trial.

Ms. Dickenson stated that some of the agents involved in Waco had been allowed by Washington to discuss their personal feelings, but ASAC Sarabyn had never been allowed to do so.

Ms. Dickenson stated that throughout the period of administrative leave (which was extensive) and even after his removal was proposed, ASAC Sarabyn has honored the gag order. She stated that if the agency removed ASAC Sarabyn, he would appeal the action to the Merit Systems Protection Board (MSPB). She stated that there would be close scrutiny of Treasury and ATF. She

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## Summary of Oral Reply - Charles D. Sarabyn

stated that they would get all memoranda which the Treasury Review Team had reviewed; all documents given to them; and all notes, including Assistant Secretary Nobel's notes. She stated that no notes would be protected, including any notes of attorneys.

Ms. Dickenson stated that MSPB (including the Dallas and Denver regional offices, now combined) has been extremely good about allowing wide-range discovery requests. The MSPB hearing will be an open hearing, as there would be no justification for a closed hearing. She stated that Treasury does not need this, ATF does not need this, and ASAC Sarabyn, who really cares about ATF, does not want it to happen.

Ms. Dickenson stated that the ATF agents have been recovering from the February 28 incident and that another hearing will just renew the trauma. She stated that no one in ATF will ever forget Waco, but it is time to close the chapter, time to quit living the pain of Waco and time to use the knowledge that has been gained.

Ms. Dickenson stated that the events at Waco were tragic, but there is no reason to keep repeating the tragedy, and to fire ASAC Sarabyn would be to repeat the tragedy. The loss of his skills and abilities would be a major loss. It would send the wrong message to ATF supervisors and ATF cannot be in the position of having supervisors knowing that even if they act in their best judgment, they risk losing their jobs. She stated that firing ASAC Sarabyn would send that message to ATF agents.

Ms. Dickenson stated that ASAC Sarabyn is a good man and an excellent agent. She stated that the letters attached to the written reply were from people who, knowing what happened in Waco, continue to have faith in ASAC Sarabyn, his integrity, and his abilities. She stated that she was asking Mr. Black to make the right decision, and the right decision is to cancel the action.

Mr. Black asked ASAC Sarabyn if, considering the decision to proceed with the raid and the process he believed was available where anyone could have called it off, had anyone ever called off a raid before.

ASAC Sarabyn responded that there had never been anything like this particular raid in ATF history but he believes that there are times when raids are called off. On this occasion, he would not have been afraid to call off the raid if he had believed it was necessary.

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**Summary of Oral Reply - Charles D. Sarabyn**

Mr. Black asked ASAC Sarabyn if he believed that it was clear to all that at any point in time anyone could have called the raid off.

ASAC Sarabyn said he thought it was clear and the tape shows that.

Ms. Dickenson said that regarding the question of whether people would really feel qualified to call off the raid, even if ASAC Sarabyn's openness did not convince other raid commanders that they could call the whole thing off, nobody even said anything. No one raised a question about going forward. She does not believe that there was a problem of people not knowing that the raid had been compromised and therefore should be called off; rather, people thought it was safe to go forward.

ASAC Sarabyn said that he hoped that no one working for ATF thinks that we will go forward with a raid if there is the possibility that people will be killed.

After closing remarks by Mr. Black, the oral reply ended at 3:05 p.m.

Summary prepared by:  
M.J. Wilkins

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DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

APR -5 1994


MEMORANDUM TO: Special Agent Phillip J. Chojnacki  
FROM: Deputy Director  
SUBJECT: Summary of Oral Reply

Attached is the official summary of your oral reply to the notice of proposed removal issued by Associate Director (Law Enforcement) Charles R. Thomson.

I am sending this summary to give you an opportunity to submit to me any changes (additions, deletions, or corrections) that you wish to have incorporated into the record. Your changes, if any, should be sent so that I receive them no later than Friday, April 15, 1994.

  
Daniel R. Black

Attachment

cc: Gail M. Dickenson, P.C.  
  
Dallas, Texas 75226

00013742

This is the official summary of the oral reply given by Phillip J. Chojnacki, Special Agent in Charge (SAC), Houston Field Division, on Thursday, March 24, 1994. The reply was given in response to a proposed removal issued by Acting Associate Director (Law Enforcement) Charles R. Thomson on February 4, 1994. Present at the reply were SAC Chojnacki; Gail M. Dickenson, P.C., SAC Chojnacki's designated representative; Deputy Director Daniel R. Black, the deciding official; Eleanor R. Loos, Esq., ATF Attorney; Barbara L. Wear-Bieger, Employee Relations Specialist; and M.J. Wilkins, Employee Relations Specialist. The oral reply began at 3:30 p.m.

#### SUMMARY

Mr. Black opened by telling SAC Chojnacki that this oral discussion was his opportunity to tell his side of the facts upon which the proposed removal was based. He advised that on the previous day he had received the written reply and attachments thereto and that he had gone through most of it.

SAC Chojnacki's oral response began shortly after the oral response of Assistant Special Agent in Charge (ASAC) Charles D. Sarabyn ended. Rather than repeat opening statements she made for ASAC Sarabyn's response, Ms. Dickenson requested that those statements be incorporated into the summary of SAC Chojnacki's response. Those remarks follow, with SAC Chojnacki's name substituted for ASAC Sarabyn's name, except in the last paragraph of those remarks.

(Ms. Dickenson stated that she would summarize what was in the narrative letter (written reply), going over certain portions and adding where necessary.

(Ms. Dickenson stated that there was a real problem with the procedures that had been used by the agency in proposing the action, from SAC Chojnacki's standpoint, for Mr. Black as the deciding official and for the agency, in terms of the materials initially given to SAC Chojnacki with the proposal notice--the material relied upon. She stated that the material consisted of selected statements that had been given and only selected portions of those statements. She stated that while an agency may rely on an investigation in proposing an adverse action, an agency may not rely only on selected portions of an investigation to support an adverse action.

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## Summary of Oral Reply - Phillip J. Chojnacki

{Ms. Dickenson stated that the problem from an adverse action standpoint is that the Treasury report relied upon by the proposing official consists of conclusions and those conclusions will not support an adverse action charge. The memoranda of interviews in the Treasury Review Report that were relied on by the proposing official were not sworn statements, they had not been reviewed for an opportunity to make corrections, and they had not been signed. Rather, the memoranda consisted of the opinions of the reviewers of what had been said by those interviewed and what those interviewed had meant to say.

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{Additionally, Ms. Dickenson stated that they had been furnished with some of the underlying documentation that had led to the conclusions of the Treasury review team--memoranda of interviews made by the Treasury review team and the Texas Rangers' interviews. She stated that while the Texas Rangers had not conducted their interviews under oath, while they had not been signed and while some of them had not been reviewed by those interviewed, they were more reliable because they had been recorded in question and answer form. This was not the case with the memoranda of interviews in the Treasury Review Report, i.e., there was no documentation of the questions that had been asked of those interviewed.

{As an example of the problem with the memoranda of interviews, Ms. Dickenson compared the summarization of ASAC Sarabyn's interview with that of Special Agent (S/A) Robert Rodriguez's. Both had been interviewed for 3 days. However, ASAC Sarabyn's resulted in a 26-page memorandum of interview while S/A Rodriguez's resulted in a 9-page memorandum of interview. Ms. Dickenson

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## Summary of Oral Reply - Phillip J. Chojnacki

stated that in order to make a fair decision, Mr. Black needs all memoranda and notes of interviews; otherwise, his decision would have to be based upon conclusions and not the evidence. She stated that it was unfair to Mr. Black as the deciding official to make a decision without his having received all of the data that was used to reach the conclusions.)

Ms. Dickenson then went to reason 1 - "Gross Failure to Properly Supervise ATF's Attempt to Serve Arrest and Search Warrants on the Branch Davidian Compound Outside of Waco, Texas, on February 28, 1993."

Ms. Dickenson stated that, as she had said in the previous oral reply, the people at the scene in Waco viewed the information that Mr. David Koresh said that ATF was coming based upon their experiences and understanding up to that point in dealing with Mr. Koresh. SAC Chojnacki had heard what ASAC Sarabyn had said about Special Agent Robert Rodriguez's statement--that Mr. Koresh had said ATF and the Guard are coming. SAC Chojnacki did not interpret that as meaning that Mr. Koresh knew that ATF was coming "then." SAC Chojnacki had heard that Mr. Koresh said repeatedly that ATF was coming, and Mr. Koresh did think that ATF was coming some time. So, the fact that on that occasion Mr. Koresh said ATF is coming did not trigger anything to any of the people who had heard it so many times before. That is why Mr. Koresh's statement did not trigger anything for SAC Chojnacki, ASAC Sarabyn, ASAC Cavanaugh or SAC Royster.

Ms. Dickenson stated that the Waco operation was not an operation that was just slammed together at the last minute without a lot of thought; a lot of thought went into it. SAC Chojnacki put together a plan that he thought would work; he considered the expertise he thought was available in ATF and picked people accordingly. SAC Chojnacki's written reply tells how each person's unique abilities were selected as to what they would be doing during the raid.

Ms. Dickenson stated that the key to going forward with the raid was whether it could be done safely. SAC Chojnacki was focused on how Mr. Koresh was reacting to newspaper articles. That is the reason SAC Chojnacki sent S/A Rodriguez back into the compound on Saturday and Sunday--to check on Mr. Koresh's actions.

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## Summary of Oral Reply - Phillip J. Chojnacki

Ms. Dickenson stated S/A Rodriguez had planned to go back into the compound on that Sunday morning anyway. The focus for SAC Chojnacki in terms of the report coming from S/A Rodriguez was how was Mr. Koresh acting. Mr. Koresh was saying the same things he had been saying for a long time, but had he changed his actions--was he nervous or agitated; was he pulling out guns; was he giving orders to those in the compound; was he saying send out the perimeter guards.

SAC Chojnacki stated that during March 1992, different agencies had started doing physical training down the road from the Davidians' compound. Mr. Koresh and his followers saw that and believed that it was ATF conducting the training. Mr. Koresh thought that ATF was flaunting the training in his face, training in front of his nose. As a result, Mr. Koresh built his bunkhead up, i.e., he had placed guards outside; Mr. Koresh and the guards were armed. When it turned out that there was no law enforcement action, Mr. Koresh locked the guns back up and reduced the paranoia.

SAC Chojnacki said that they wanted to know if the newspaper articles had triggered for Mr. Koresh the same response as the earlier training had--were there any physical preparations to defend against a law enforcement attack. He stated that S/A Rodriguez and the other agents in the undercover house were to look for that type or activity. If there was anything seen that brought up risk factors, they would not go in. ATF had not done anything from which they could not back off until they actually drove onto the compound.

When SAC Chojnacki again referred to the March 1992 training (consisting of the Waco and Los Angeles and other police departments), Mr. Black asked him if Mr. Koresh's action to that training was in his tactical thinking, if he was looking for a response from Mr. Koresh similar to his response to the training.

SAC Chojnacki stated that at the time, he did not know about that training; he did not learn of that training or that Mr. Koresh thought that ATF was involved in the training until after the raid. However, at the time, SAC Chojnacki thought that the articles printed in Australian newspapers might have triggered some type of response from Mr. Koresh and that was one reason for S/A Rodriguez's return to the compound on that Sunday morning.

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## Summary of Oral Reply - Phillip J. Chojnacki

Mr. Black asked where the reports that Mr. Koresh was always saying that he knew ATF was coming came from.

SAC Chojnacki stated that the reports came from several sources. Whenever S/A Rodriguez was present in the compound for Bible studies he heard Mr. Koresh make such comments. The residents of the compound showed movies about ATF as they preached to S/A Rodriguez. Others who had left the compound talked about Mr. Koresh referring to ATF as Assyrians, and some of them repeated Mr. Koresh's statements to the agents.

SAC Chojnacki stated that he believed that the Federal focus by Mr. Koresh was caused by ATF beginning the FFL investigation and calling Mr. Koresh back in to fill out 4473 forms. Mr. Koresh talked with S/A Rodriguez about that, saying it made it obvious to him that ATF was looking at him.

Ms. Dickenson stated that another example of the repeated "ATF is coming" type of language by Mr. Koresh could be found in a statement given by Mr. Craddock. Mr. Craddock had heard Mr. Koresh make this statement many times before. He did not take the statement Mr. Koresh made on February 28 to mean that Mr. Koresh thought that an ATF raid was imminent. Mr. Craddock stated in his report to the Texas Rangers that Mr. Koresh often preached about ATF coming and he thought that the statement made on that day was part of his normal routine.

Ms. Dickenson stated that with regard to charge 1, we know that the raid failed and SAC Chojnacki has always taken responsibility for that failed raid. SAC Chojnacki supervised the operation; he put together the plan and selected people he thought could make the plan successful. He acted in accordance with instructions he had received from his supervisors.

Ms. Dickenson then went to reason 2 - "Making False Statements."

Ms. Dickenson stated that basically the charge is that SAC Chojnacki consistently said the same thing but other people disagreed and, therefore, his statements are false, as best she could understand the charge.

Ms. Dickenson stated that to show that a statement is false, the agency has to show intent to deceive. She stated that the charge that SAC Chojnacki made consistent statements

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## Summary of Oral Reply - Phillip J. Chojnacki

about what was going on--his statements and actions are consistent. The fact that he went forward with the raid is consistent with statements he did not believe that Mr. Koresh knew ATF was coming. According to the proposal notice, if SAC Chojnacki did not draw the same conclusions that the Treasury Review Team drew, then he is lying.

Ms. Dickenson stated that people who had the same or more information than SAC Chojnacki had did not conclude that the raid could not be safely performed, as evidenced by the fact that no one stopped the raid or showed concern.

Ms. Dickenson stated that Theodore Royster, then the SAC of the Dallas Field Division and the Incident Commander for the raid, heard the same information that ASAC Sarabyn had conveyed to SAC Chojnacki from S/A Rodriguez.

Ms. Dickenson stated that James Cavanaugh, then the ASAC of the Dallas Field Division and the Deputy Tactical Coordinator for the raid, probably knew more than anybody else because he heard directly from S/A Rodriguez and also saw the mailman who he knew was a cult member talking with the media and then saw the mailman return to the compound. (SAC Chojnacki made a correction in that ASAC Cavanaugh did not see the contact between the two individuals; he was given this information by other agents.)

Ms. Dickenson continued that the information about the mailman shows up on videotapes and that ASAC Cavanaugh was present at that briefing. Thus, there were SAC Royster and ASAC Sarabyn who had the same information as SAC Chojnacki; and there was ASAC Cavanaugh who had information in addition to what the others had. In addition, SAC Peter Mastin, the SAC of the New Orleans Field Division and the Deputy Incident Commander, was at the staging area when ASAC Sarabyn came and gave an abbreviated statement of S/A Rodriguez's report that Mr. Koresh knew ATF was coming. SAC Mastin heard that and did not raise any concerns.

Ms. Dickenson stated that it is impossible to believe that the commanders could think the raid could not be executed safely and still not say anything. It is impossible to believe that they would allow themselves or their fellow agents to go forward to be met with armed resistance.

Ms. Dickenson stated that SAC Chojnacki's interpretation of S/A Rodriguez's report was the same as the interpretation of the other raid commanders. No one believed that the raid had

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## Summary of Oral Reply - Phillip J. Chojnacki

been compromised or they would have said something. There was no error in judgment: everyone was working with the best information they had, and the decisions made were valid with the facts that were available.

SAC Chojnacki stated that everyone involved who was in a command role would have said if he did not like the way things were going. He had worked with all of them at some point in his career with ATF. Specifically, ASAC Cavanaugh spoke up when he did not like what was happening during the planning stages. SAC Chojnacki said that with him being in radio contact with the others and with the open telephone lines, he felt comfortable that there was no way he would be able to do something that should not be done without somebody speaking up. In this case, they were his peers, not his subordinates. They all felt that they were doing what they had planned to do.

Mr. Black asked if there was any misunderstanding on the part of the other individuals--if they all felt that they had the authority to call the raid off if necessary.

SAC Chojnacki stated that he could not believe that they would not realize that they had that authority. If he were a guest in somebody else's area, he would not stand by and let something happen if he thought it was wrong. He could not believe that any commander or agent would act any differently.

Ms. Dickenson then went to reason 3 - "Attempting to Wrongfully Shift Responsibility to a Subordinate for your Failure to Properly Supervise the Raid."

Ms. Dickenson stated that specifically the charge is that SAC Chojnacki attempted to make the Texas Rangers think that S/A Rodriguez, the undercover agent, had failed to adequately communicate Mr. Koresh's knowledge and that he did so to shift the blame onto S/A Rodriguez.

Ms. Dickenson stated that SAC Chojnacki has always taken full responsibility for the failed raid. He made the decision that the raid should go forward and he stuck with that decision. She said that the statement quoted is that SAC Chojnacki said he did not blame S/A Rodriguez. There was no reason for SAC Chojnacki to blame S/A Rodriguez because he made the decision and stands by it.

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## Summary of Oral Reply - Phillip J. Chojnacki

Ms. Dickenson stated that SAC Chojnacki's statement to the Rangers was to try to clarify for them the emotional state of S/A Rodriguez when he went back into the compound on the twenty-seventh and twenty-eighth. S/A Rodriguez was very uncomfortable going back but he had to because he was the only agent who could go back in. It was important for the Rangers to know that the fact that S/A Rodriguez was nervous when he returned from the compound on the twenty-eighth did not mean he had seen anything of concern. He had been nervous about going in anyway.

Ms. Dickenson stated that the proposal notice talks about the differences in S/A Rodriguez's statement about what he remembers this week versus the next week. SAC Chojnacki was only trying to point out that statements can and do change; people in traumatic events will have changing statements. There might very well be lapses. A third statement may have every single blank filled in, but even then, it cannot always be relied upon to be completely accurate.

Ms. Dickenson said that SAC Chojnacki did not know what experience the Rangers had had in traumatic events, but he was trying to convey ATF's approach to such situations. ATF has a different approach from some other agencies, a caring approach.

Ms. Dickenson referred to a statement from S/A Vargas who had talked about S/A Rodriguez coming back and saying he was concerned that people might blame him for the failed raid. Both SAC Chojnacki and ASAC Sarabyn told S/A Vargas to convey to S/A Rodriguez that they did not blame him; he had done a good job; he had fulfilled his duty.

SAC Chojnacki stated that on several occasions when they saw S/A Rodriguez he and ASAC Sarabyn tried to make a point of confirming that he had done what they had asked of him. S/A Rodriguez had answered all of the questions he had been asked to answer. SAC Chojnacki assured S/A Rodriguez on February 28 or March 1 that he had not done anything wrong, that he and ASAC Sarabyn had made the decision--he stated this to S/A Rodriguez over and over again. Two or 3 weeks after the event, S/A Rodriguez finally went to SAC Chojnacki and ASAC Sarabyn and told them he understood that it was not his fault, that it was their decision and their responsibility and that he could live with that.

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## Summary of Oral Reply - Phillip J. Chojnacki

SAC Chojnacki stated that he was trying to explain to the review team and the Texas Rangers that this was a unique situation. He tried to explain his recognition that you can have six people talk about a particular incident and that all six people may have different stories but none of them are lying. He stated that he tried to explain to the Rangers that S/A Rodriguez could have been completely accurate in what he told ASAC Sarabyn, and that ASAC Sarabyn and he (Chojnacki) could have been completely accurate about their interpretation of what they had been told.

[REDACTED]

[REDACTED] He asked if there were any concerns about S/A Rodriguez's judgment.

SAC Chojnacki stated that they were not looking for judgment; they asked S/A Rodriguez for the facts--what did you see, were mattresses being put against walls, were guns being positioned--they asked observation questions.

Ms. Dickenson stated that no one asked S/A Rodriguez for his interpretation of what was said, just what he saw.

Ms. Dickenson then went to reason 4 - "Use of Poor Judgment in Allowing Alterations to be Made to the Written Raid and not Providing Notice of Such Alterations to the Texas Rangers and to the Department of the Treasury."

Ms. Dickenson stated that as she said during ASAC Sarabyn's oral reply, there was no raid plan. She asked SAC Chojnacki to explain who would have prepared the raid plan if one had been done.

SAC Chojnacki stated that they had received the draft of the National Response Team (NRT) plan. It was their understanding that that plan was not in effect but that the draft plan had been sent for review and evaluation. Even though the NRT plan was not yet in effect, they tried to use guidelines in that plan for the raid. SAC Chojnacki stated that ASAC Darrell Dyer, Kansas City Field Division, was brought in to be his assistant.

SAC Chojnacki explained that for a raid plan, there is a specific form that is filled out by the case agent, the raid leader, or the Special Response Team (SRT) leader. The raid

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## Summary of Oral Reply - Phillip J. Chojnacki

plan, which is done at the field level, might be completed in a truck or car, in a raid van or at a police station; it is a working document that is prepared at of the last minute, just before a raid takes place. The plan may be typed or handwritten and is not seen by the SAC until weeks after the raid.

SAC Chojnacki went on to explain that when there are multiple SRTs involved, the host division is responsible for the raid plan. In the case of the raid on the Branch Davidian compound, the leader of the Houston SRT would have been responsible for ensuring that the raid plan was done. The plan was that when the raid participants arrived in Waco they would formulate the plan just before the raid. Everyone knew what he/she would do, but the formal document had not been prepared. Moving the raid up 24 hours eliminated the 24-hour period during which the raid plan would have been prepared. S/A Curtis Williams, who would have prepared the raid plan, had been sent home after the raid was moved up.

SAC Chojnacki stated that several days after the raid, he learned that the Rangers wanted something that would show who was to have been where; who was to have been in charge of what; each person's assigned task, and he started looking for a document that would have this type of information. He found out about the operational plan that ASAC Dyer had been drawing up. The draft operational plan was on a computer disk which SAC Chojnacki gained access to. He stated that this should have been a non-tactical document. There should have been nothing in this operational plan about the raid plan.

SAC Chojnacki stated that ASAC Dyer modeled the operational plan after plans used during his time in the military and included information on tactical plans. When SAC Chojnacki found a copy of the operational plan, he found that it included information on the raid. He felt that plan covered everything the Rangers wanted to know.

SAC Chojnacki said that when he read through the printed document, he found that everything was correct except for the dates. Also, since the operational plan had been prepared earlier, it did not have changes that he had been told to make by then Associate Director (Law Enforcement) Daniel M. Hartnett after Mr. Hartnett had been briefed on the previous Friday. Some of the others knew about the changes that been made pursuant to Mr. Hartnetts' instructions, others did not.

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## Summary of Oral Reply - Phillip J. Chojnacki

SAC Chojnacki said that after the draft operational plan had been printed from the computer disk he wrote in the major changes recommended by Mr. Hartnett and changed the dates to reflect that the raid actually occurred on February 28, not on March 1. He took the document to "Jim." SAC Chojnacki said he could not remember exactly what he said to Jim, but there was no attempt on his part to deceive. He stated that he did not realize at the time that there were several versions of the operational plan in print. He thought he had found the earliest draft and they had two documents in the file, one with his marginal notations and the other without the notations.

SAC Chojnacki said that he later gave the Texas Rangers another draft of the operational plans. The information on this second document was factual but it had information that was not in the first one.

Mr. Black asked if the Waco review team could appreciate that the document was an operational plan and not a raid plan.

SAC Chojnacki responded that the fact that there were multiple drafts meant to them that he was trying to cover up. He said that they were supposed to have executed two warrants on the morning of the raid--one on the compound and one on the Mag Bag. As things transpired, the raid on the Mag Bag was not executed until 2 days later and for that raid, there was a written raid plan.

Ms. Dickenson said that, really, reason 4 is based on a misunderstanding. There was no alteration to a raid plan because there was no raid plan to begin with.

Ms. Dickenson said that SAC Chojnacki had been an excellent special agent and that he was an excellent special agent in charge. She stated that he obeyed all of the gag orders. She stated that his focus after the twenty-eighth was the successful prosecution of the Branch Davidians and to let the Headquarters people handle the press matters, but he took a beating in the press.

SAC Chojnacki said that he had been contacted by the press and told that they knew he had another side of the story. However, he believed it was in the best interest of the Bureau not to go forward with his story. He stated that the most critical parts of the incident were witnessed by

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## Summary of Oral Reply - Phillip J. Chojnacki

himself, ASAC Cavanaugh and ASAC Sarabyn, and SAC Royster. He stated that most of the other 100 people there were not witnesses. They only knew about information third or fourth hand. He had answers to the questions that people had, but he was not given an opportunity to answer those questions. The successful prosecution of some of the Branch Davidians is all they have left to offer.

Ms. Dickenson urged Mr. Black (ATF) to conclude Waco--to end it. She asked that he not put people through it again. She stated that ATF has been through a lot, SAC Chojnacki and ASAC Sarabyn more than most. She stated that it would not do Treasury, ATF, or ATF agents any good for the agency to remove SAC Chojnacki and have an MSPB hearing.

Ms. Dickenson stated that SAC Chojnacki had years of experience and training with ATF. She stated that to lose him will be a real loss. She stated that firing SAC Chojnacki would be even more of a loss because of the message it would send to agents in the field when they are called upon to make decisions. She stated that it would be a disruptive message to supervisors who will be called upon to make decisions.

Ms. Dickenson stated that SAC Chojnacki will stand by decisions he makes; he did it before, he did it at Waco and he will continue to do it.

Ms. Dickenson urged Mr. Black to cancel the removal action and reminded him that he now has information that the proposing official did not have.

Finally, Ms. Dickenson told Mr. Black that there are many reasons the agency would not want to go before MSPB, including the emotional effect a hearing would have on agents who would be called as witnesses.

After closing remarks by Mr. Black, the oral reply hearing ended at 4:20 p.m.

Summary prepared by:  
M.J. Wilkins

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Mr. CHABOT. While they're being handed out I will read to Mr. Chojnacki from document 23, which is the Treasury Department summary of Mr. Chojnacki's oral reply to Mr. Black about the incident.

"Chojnacki said that he had been contacted by the press and told that they knew he had another side of the story. However, he believed it was in the best interest of the Bureau not to go forward with his story. He stated that the most critical parts of the incident were witnessed by himself, Cavanaugh, and Sarabyn, and Royster. He stated that most of the other 100 people there were not witnesses, they only knew about information third or fourth hand. He had answers to the questions that people had, but he was not given an opportunity to answer those questions. The successful prosecution of some of the Branch Davidians is all that they were left to offer."

Now, Mr. Chojnacki, you said that by keeping quiet about the incident you could offer the successful prosecution of the Branch Davidians. What specific incident was it that you were talking about?

**STATEMENT OF PHILLIP CHOJNACKI, FORMER SPECIAL AGENT IN CHARGE, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, HOUSTON, TX**

Mr. CHOJNACKI. My concern at that time related to the contact that I had with Mr. Sarabyn on the tarmac at the airport with Ted Royster, the SAC of Dallas present, where we discussed the information that had come from Robert Rodriguez, the agent in the undercover house.

My feeling at that time was that I—while I understood—while I thought I understood the information that Robert was passing to us, I did not understand at that particular point in time that he meant that Koresh was aware that we were coming then. I understood that Koresh talked that way to him all the time. I didn't see new information, and I in good faith was going forward with the warrant.

Mr. CHABOT. Let me stop you there. The Treasury report downplays this point a little bit, but there is something I wanted to ask you. It notes that after you learned that Koresh knew the ATF and the Guard were coming, you called ATF headquarters in Washington; correct?

Mr. CHOJNACKI. That's correct, sir.

Mr. CHABOT. That's where the higher-ups were, in Washington, of course. What was their reaction to you talking to them?

Mr. CHOJNACKI. There was no reaction, sir. I was reporting to the emergency command center at headquarters. The agent that I spoke to, I believe, was John Jensen, who was one of the agents staffing the command center, and I was merely advising him of the status of the investigation at that time.

Mr. CHABOT. What time was it then, 9:10?

Mr. CHOJNACKI. It would have been somewhere approximating 9:10, 9:15, somewhere in that time frame.

Mr. CHABOT. The raid was initially supposed to start at 10, because it was thought all the men would be out in the pit working at that time; correct?



Mr. CHOJNACKI. That was an approximate time of arrival, yes, sir.

Mr. CHABOT. That was one of the keys to this whole raid, that the men would be in the pit and separated from their guns, correct?

Mr. CHOJNACKI. Well, the key would be that they would not be in their rooms but separated from their guns, not necessarily outside. If it was raining, we wouldn't expect them to be outside or outdoors.

Mr. CHABOT. You had just learned or you had just discussed with Sarabyn the information about Rodriguez prior to making that phone call; is that right?

Mr. CHOJNACKI. That's correct, sir.

Mr. CHABOT. The raid was supposed to happen at 10.

Mr. CHOJNACKI. We presumed that Robert would come out at approximately 9:15 that morning, contact Chuck Sarabyn, Sarabyn would pass the information to me, then Sarabyn had to drive to Bellmead.

Mr. CHABOT. Excuse me. Not to interrupt but, I have only got a couple of minutes left. You had changed the time, or you speeded the time up after that conversation on the tarmac; correct?

Mr. CHOJNACKI. Rodriguez came out 10 minutes early, sir. So the final—if all the steps in progress took place as we had predicted, he came out 10 minutes early. We got there approximately 10 minutes early. We did not intentionally do anything to speed it up. We were anticipating how long it would take to go from point A to point B, the Bellmead Center, and then for the men and women to travel from that location to the raid scene.

It wasn't like a military thing where we had other resources doing things simultaneously. We were estimating that time, and we exceeded that by 10 minutes because we initiated our conversation on the tarmac by 10 minutes.

Mr. CHABOT. There is one document, Mr. Chojnacki, that basically suggests that when you talked to Washington, that you told them that Koresh knew they were coming, that Washington told you, you're on the site, you make the decision. Is that what really happened?

Mr. CHOJNACKI. I don't remember any such conversation, sir. My conversation, to the best of my recollection, was reporting to somebody who was not a superior but somebody who was staffing that office, that Robert Rodriguez had come out, we had had the conversation, I saw no reason for the raid to not go forward, they were not aware of us, so we could execute it safely.

Mr. CHABOT. I'm almost out of time here.

Mr. Sarabyn, let me ask you a quick question. I'm going to ask you about some telephone conversations you had with former ATF Agent Larry Sparks. I know that some of the members here have opined that Mr. Sparks may not be a reliable source of information, so I am only going to ask you about something about you were reported saying to him. Do you recall saying, and I quote, "obviously some people way up said some things after that that weren't true, and it goes right down to the decision to go, and they were part of it?" Do you remember making that statement?

**STATEMENT OF CHUCK SARABYN, FORMER ASSISTANT SPECIAL AGENT IN CHARGE, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, HOUSTON, TX**

Mr. SARABYN. Something like that, yes.

Mr. CHABOT. And finally, let me address this question.

Mr. MCCOLLUM. Mr. Chabot, your time has expired.

Mr. Scott.

Mr. SCOTT. Mr. Chairman, I would yield 30 seconds to the gentleman from New York so he can complete the point that he was making.

Mr. SCHUMER. The point I wish to make is, I would say to everyone listening to this hearing, and particularly those writing and reporting on the hearing, that the most important point today is who fired first, and simply because there is no controversy about it, it shouldn't be forgotten.

In other words, we may debate other, more trivial points, but the number one salient feature here is who fired first, and even if the element of surprise was lost, it does not justify firing on agents serving a warrant.

Thank you.

Mr. SCOTT. Thank you. I would like to follow up on that with Agent Williams. Can you go through just very briefly, you were walking up to the door, and how close to the door were you when the shooting started?

**STATEMENT OF JOHN HENRY WILLIAMS, SPECIAL AGENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. WILLIAMS. About 10 feet from the door.

Mr. SCOTT. Was it your intention prior to that to—had Koresh come out by then?

Mr. WILLIAMS. Yes.

Mr. SCOTT. How far from the door were you when he closed the door in your face?

Mr. WILLIAMS. Approximately about 15 feet from the door.

Mr. SCOTT. Did you continue walking forward?

Mr. WILLIAMS. Yes.

Mr. SCOTT. How close were you when the shooting started?

Mr. WILLIAMS. I—basically about 10 feet. After that, the shooting started immediately after he closed the door.

Mr. SCOTT. Is there any question in your mind as to where the shooting was coming from?

Mr. WILLIAMS. None.

Mr. SCOTT. Thank you—excuse me, that was from the inside coming out.

Mr. WILLIAMS. Yes, from the inside coming out.

Mr. SCOTT. OK.

Mr. Cadigan, you are a firearms expert?

Mr. CADIGAN. Yes, sir.

Mr. SCOTT. We have had reports that several agents were shot through their vests. My question is whether or not there was any illegal ammunition, because bullets that pierce bulletproof vests are supposed to be illegal. Well, was there any illegal ammunition on site you could tell?

Mr. CADIGAN. Not that was—that we found. We found a lot of ammunition, hundreds of thousands of rounds of ammunition, but none of which would be, to my understanding, that are illegal.

Mr. SCOTT. Do the laws against ammunition that go through bulletproof vests, do those include the high-powered rifle ammunition?

Mr. CADIGAN. It is my understanding that some vests that are worn offer protection only up to a particular caliber, and that high velocity or high-powered rifles is not one of them.

Mr. SCOTT. Thank you.

Mr. Rodriguez, is there—was there any question in your mind, having been inside the compound, that Koresh knew that the agents were coming that day?

**STATEMENT OF ROBERT RODRIGUEZ, SPECIAL AGENT,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. RODRIGUEZ. Sir, there's no question in my mind that Koresh knew that we were coming, yes, sir.

Mr. SCOTT. Can you describe briefly his emotion when he got the word?

Mr. RODRIGUEZ. Yes, sir. We were—I was inside the compound, on that day, that morning. I had asked him some questions regarding a newspaper clipping. He sat down and started to explain to me the difference between his preachings and another subject's preachings.

As we were discussing the Bible, one of his subjects, Mr. Jones, came in and advised him that he had a telephone call. He ignored the call and continued to talk to me.

At that point, everything was normal. There were only three people in that living room at that point. Everything was calm. He was normal. He was talking to me as he always spoke to me during all our sessions. Nothing was wrong.

Mr. Jones again came to the living room and advised him that he had an emergency call from England. At that time, he quickly got up and left the room. At that time it was still just Mr. Schneider and Sherri Jewell in that room with me, at that time. He came back approximately 3 or 4 minutes later, and when he came back, I mean it was like day and night.

As he approached me, he was—he was shaking real bad. He was breathing real hard. At one time he put his hands in his pocket, in his jacket pocket, to probably keep his hands from shaking. He sat down next to me, probably about this far, and he continued to try to finish what he was talking to me about.

When he grabbed the Bible, he was shaking so bad that he could not actually read it. I grabbed the Bible and asked him what is wrong. At that time he stopped, and as I sit here I can remember, clearly, he took a deep breath, he turned and looked at me and said, "Robert, neither the ATF or the National Guard will ever get me. They got me once, and they'll never get me again."

Mr. SCOTT. Now, was there any question—were you surprised at what happened after the ATF came? Were you surprised that he had prepared the ambush?

Mr. RODRIGUEZ. I'm sorry, sir?

Mr. SCOTT. Were you surprised that he had prepared the ambush?

Mr. RODRIGUEZ. No, sir.

Mr. SCOTT. Knowing what you know, did you convey that information to your superiors?

Mr. RODRIGUEZ. Yes, sir, I did.

Mr. SCOTT. Was there any question in your mind that they got the message?

Mr. RODRIGUEZ. Sir, there's no question in my mind that they got the message.

Mr. SCOTT. Did you have any reason to hold back information that you had that the agents were, in fact, in danger?

Mr. RODRIGUEZ. Sir, in memory of the four agents that were killed and all the agents within the Bureau of Alcohol, Tobacco and Firearms, as I sit here, I tell you, I told them what happened inside the compound. I advised them that they knew that we were coming, that Koresh knew. I advised all the people in the under-cover house. Mr. Cavanaugh was one of them.

I then called Mr. Sarabyn and the first thing I said to him when he picked up the phone was, Chuck, they know, they know. They know we're coming. I can remember that as long as I live, I'll remember those words.

Mr. MCCOLLUM. Thank you, Mr. Scott. Mr. Coble, you're recognized for 5 minutes.

Mr. COBLE. Mr. Chairman, I just came from another meeting and I will yield to the gentleman from Ohio, but I want to make this brief, brief point.

The gentleman from New York reminded us earlier what the most important point is. This may well be subject to interpretation. I think clearly the most important point before these two subcommittees, Mr. Chairman, is to determine what went wrong and to prevent a duplication during subsequent raids. Having said that, I will yield to the gentleman from Ohio, how much time I have, Mr. Chairman, 4½ minutes, I guess.

Mr. MCCOLLUM. Mr. Chabot.

Mr. CHABOT. Thank you.

Mr. Sarabyn, I'd just like to follow up again with your statement, where you said, "Obviously, some people way up said some things after that that weren't true. It goes right down to the decision to go. And they were part of it." By "way up", you're talking about upper echelon officials, I assume. Is that correct?

Mr. SARABYN. What I was making reference to, sir, is the element of surprise. Throughout—at this point, it became a very big issue. The point I was trying to make is I was never given the order not to go if we lost the element of surprise. There has been much conversation after that about the element of surprise and I was trying to say I do not know who up above me, how far, whatever, gave that order to somebody, but I never received that order.

Mr. CHABOT. OK. And could you again relate what exactly your position was in the raid?

Mr. SARABYN. I was the tactical coordinator. I was in charge of coordinating all the SRT's—there were three SRT teams. Then three support teams with that, and then my job was to pass information on to the incident commander and his deputy for action.

Mr. CHABOT. And so no one had ever conveyed to you how important the element of surprise was?

Mr. SARABYN. The——

Mr. CHABOT. Is that right?

Mr. SARABYN. During a dynamic entry, the element of surprise is a part of doing a dynamic entry. But with the book and the things that were being—or people were saying after, they were saying you were given the order not to go if you lost the element of surprise, which I was never given. In those statements that I was making earlier, I was trying to explain that all this is going on above me, but that order never came to me.

Mr. CHABOT. OK. That order never came to you?

Mr. SARABYN. Right.

Mr. CHABOT. Mr. Chojnacki, just a couple followup questions. You just testified that you told Mr. Black that you knew it was in the best interest of the ATF not to go forward with your story, because you did not want to go public with facts that could undermine the prosecution. How would what you knew undermine the prosecution?

Mr. CHOJNACKI. My concern was that after having lost 4 agents and several—and another 20 or so wounded, I did not want to create a controversy over terminology or an understanding of terminology as to what happened on the tarmac. I accept responsibility. I called a decision based on what I thought was the right thing to do and based on what I thought my understanding of the situation was.

For me to create a situation that might cause dissension within our own ranks over what I was told and the semantics of that kind of thing, I felt would be foolhardy because the—our objective at that point was to see that if those people shot and killed our agents, that they were, in fact, successfully prosecuted and not create a side issue which could undermine that prosecution.

Mr. CHABOT. OK. At the time you made the remark, which was in early 1994, the Treasury report had already been released, and discussing the loss of the element of surprise was already discussed in there. So was there anything else that you knew, that you knew that the agency did not want disclosed?

Mr. CHOJNACKI. It wasn't new information, sir. It's just that from my perspective the review report was matter of fact. It said that I understood that we had lost the element of surprise, that I had been ordered not to go forward if I had lost the element of surprise, and that with that knowledge that I had not only lost, I disobeyed orders from my superior and forced my agents into a situation where several of them were killed.

Mr. CHABOT. Let me address this question to both Mr. Sarabyn and Mr. Chojnacki. You both read the Treasury report, correct?

Mr. CHOJNACKI. Yes, sir.

Mr. CHABOT. Both of you, and you're both nodding affirmatively.

Mr. CHOJNACKI. Yes, sir, we've read it.

Mr. CHABOT. Thank you. Do you find that it fairly apportions blame for the mistakes that were made, or do you see it as an effort to blame those agents who were out in the field while shielding some of the people higher up in Washington? Let's ask each of you to respond.

Mr. CHOJNACKI. As I previously stated, sir, I accept the responsibility for making the field decision. I was the incident com-

mander. I was the person to make that decision. Those people reporting information to me were bringing it to me for me to make that tactical decision and recommendation to Chuck. The people in Washington, at that particular point, could not effect or impact on that decision whatsoever.

Mr. CHABOT. Mr. Sarabyn.

Mr. SARABYN. I also accept the responsibility for the decision to go. I just think the Treasury review book focused just on one person, or two people, or whatever. There was several commanders there. There's several people that participated and, you know, we just asked to be treated fairly. I don't think we were in there.

Mr. CHABOT. I'm sorry, what was the final part?

Mr. SARABYN. I don't think we were treated fairly in the book.

Mr. CHABOT. OK. Mr. Black, let me ask you a followup question here. You said you believed that the report is accurate as far as you could tell, correct?

Mr. BLACK. That's correct.

Mr. CHABOT. And that you believe that these people, these two gentlemen, lied and that they lied to investigators and that they changed documents, correct?

Mr. BLACK. That's correct, yes.

Mr. CHABOT. And yet you rehired them.

Mr. BLACK. We did, we did rehire them back. I think, as you're aware under the civil service rules, if an individual is fired for cause, they have that opportunity to appeal to the Merit Systems Protection Board, at which time the decision can be taken out of our hands.

We believed it was in the best interest of the Government to rehire those individuals, keeping in mind that we rehired them no longer as supervisory special agents, no longer with the authority to lead special agents or to carry a gun or make arrests.

Mr. CHABOT. But you did rehire them, feeling all those facts were true?

Mr. BLACK. Yes, sir.

Mr. MCCOLLUM. Your time is up, Mr. Chabot.

Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

Mr. Cadigan, you're the expert on guns and you examined the guns from the compound after the fire. What did you find?

Mr. CADIGAN. Well, my responsibility in this case was twofold. It was, first, to respond after the fire to conduct a preliminary survey of the compound to determine how individuals from the FBI laboratory and our evidence response teams should proceed. And I did that.

Following the collection of the evidence for the 17 or 18 days that the Texas Rangers and Texas Department of Public Safety and FBI law enforcement officials did, I then examined the evidence that was submitted. It was approximately 2,000 items, and in that evidence I found approximately 297 firearms or the remnants of firearms, and I examined those firearms to determine whether or not any of those had been altered to—from the semiautomatic mode, that is one—the firearm fires one shot for each time the trigger is pulled, to the full automatic mode, which means the firearm fires

as long as the trigger is depressed. And that's what I examined, those 297 weapons to determine, if any of them had been altered.

Ms. LOFGREN. And did you find any that had been altered?

Mr. CADIGAN. Yes, ma'am. I have a chart to my right. That is a listing of the firearms that I examined and that I found to break out into the particular categories.

I found in the AR-15 category, that is the AR-15 being the semi-automatic version of the assault rifle that is known in the military, in the full automatic, as the M-16. There were 34 of those. There were 16—I'm sorry, 61 M-16's, 61 AK-47's, the Chinese or Russian assault rifles. Then there were various 12-gauge shotguns, other assault rifles, and inclusive were the 2 Barrett .50-caliber semi-automatic rifles.

Now, in the category that—in the categories that are shown there, under the M-16 category, not all of those was I able to make a determination if they had been altered. And the reason for that is that in order to accomplish the alteration of a firearm from semi-automatic to full automatic, you need, for this particular firearm, at least six parts.

I have a chart here in front of me, of those particular parts that are necessary to change an AR-15, which is a semiautomatic version, to an M-16, which is full automatic. And in the firearms that I examined that I testified to in the trial in Waco, or actually in San Antonio, but about Waco, in the ones that I said were altered to fire from the fully automatic position, I found each one of these parts in that particular firearm.

Now, many of them, matter of fact most of them, were not—I was not able to fire them. But what I was able to do—

Ms. LOFGREN. Was that because they were damaged?

Mr. CADIGAN. Yes, they were damaged in the fire. And I was able to take one of them and test fire it. I made a videotape of the test firing that I brought with me. I also, in the videotape, have the AK-47, the assault rifles that were altered, test firing those.

These parts I found in the M-16 or the ones that I called to fire in the full automatic mode, and I was conservative as I could be as far as calling which ones were altered. Now, in the M-16 category, there were 22 firearms that I found to be modified to fire full auto. And not AK—

Ms. LOFGREN. And it was not legal to do that?

Mr. CADIGAN. It was my understanding it is not, yes, ma'am.

Ms. LOFGREN. Thank you very much, I appreciate that.

Mr. Rodriguez, I—you were undercover in the compound and had an opportunity, I understand, to really observe Mr. Koresh. Now, when you there, were you separated from, as were the other men, from the women, as we've had testimony from others?

Mr. RODRIGUEZ. No, ma'am. Every time that I entered the compound and met with Koresh, it was always on a one-to-one basis.

Ms. LOFGREN. I see.

Mr. RODRIGUEZ. It was always—the one thing we did for hours was to—he would preach the Bible to me.

Ms. LOFGREN. So you really had an idea from all of that of what his religious philosophy was and what he thought?

Mr. RODRIGUEZ. Yes, ma'am.

Ms. LOFGREN. Can you tell us what he was preaching and what it involved and based on that was he going to give up, was there some other approach—perhaps a siege—that would have worked in your judgment?

Mr. RODRIGUEZ. I'll answer that question and advise you that everything that I say here regarding the Bible is—are items that I learned from him. I was not an expert in the Bible when I went inside the compound and first met with David or Mr. Koresh. Everything that I can say about him are things that are planted in my head, which I really wish that I could get rid of.

But the difference, and it's easy, the difference between Koresh and I would say normal people, I would use me as an example. I'm Catholic. As a Catholic, I've been brought up and believe that one of these days the judgment day will come. And that we always need to prepare ourselves because we never know when it's going to come. If it comes, it comes; and if we're ready, we're ready.

In their belief, you have to understand their Book of Revelations and Book of the Seven Seals was, his whole life was the Book of the Seven Seals. That is what governed his thinking, his beliefs. Everything was right there in those Seven Seals.

The difference between his and mine, was that he also believed that judgment day would come, but the difference is that he would go or judgment—they would go and make judgment day arrive. In other words, they were going to make it happen. That's the difference. We wait and they were going to make it happen. That's where the Four Horsemen on the Seven Seals come in, as he emphasized the violence and destruction that occurred or was done by the Four Horsemen.

Mr. MCCOLLUM. Thank you, Ms. Lofgren. Your time has expired.

Mr. Zeliff.

Mr. ZELIFF. Mr. Hartnett, I think you may be one of the most important witnesses we've heard from so far. Last week, you testified that the Treasury report that reviewed the ATF raid was, according to your own understanding of the facts, filled with omissions, falsifications and false statements.

You also alluded to the idea that these omissions and falsifications may not have been accidental. In particular, you suggested that the element of surprise, which the Treasury report portrays as a condition of the requirement of the original raid plan, was, in fact, never discussed, at least not in those terms, as a condition or requirement prior to the raid.

Now, if I'm not mistaken, the implications of this are serious. It seems to me that what you are saying is that this condition or requirement may have been invented, the idea of a condition known as the element of surprise, by someone writing the report, after the fact. And the significance of such an invention, of course, is that it would relieve the top leadership of Treasury of any blame. It would relieve Under Secretary Ron Noble of any blame and would place the blame instead on the line agents and the commanders. They would be blamed for having not followed the plan. They would be fired and Treasury would have cleaned house, despite the fact that the condition that they were held to have violated never existed in the first place.



Now, I want to be sure that this is the impression you meant to leave, to give us. So if you could confirm my understanding and answer a very pointed question, are you suggesting that Ron Noble and those who approved the final Treasury report knowingly misled the American public and invented a condition called the element of surprise in order to protect themselves?

**STATEMENT OF DANIEL HARTNETT, FORMER DEPUTY DIRECTOR FOR ENFORCEMENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. HARTNETT. I saw Ron Noble testify on a national program several months ago or a month ago where he said both Treasury and ATF ordered the commanders at Waco not to proceed, or to abort the raid if they lost the element of surprise. And what I'm saying to this committee is that I have never heard the term, "element of surprise," until after the raid, when we started using it ourself and the media started using it.

But I have to also add that in the briefings, the briefings that I had and Mr. Higgins had, the secrecy of the raid was discussed and was an element of the raid plan that was given to me and to Mr. Higgins. It was just that nobody ever called and said abort the raid if you use the element of surprise. That just never happened. But secrecy was a part of the plan—secrecy and safety. I mean it was discussed over and over again.

Mr. ZELIFF. Did you think you were set up?

Mr. HARTNETT. By Mr. Noble? I think Mr. Noble felt that he had to be very careful in a new administration not to look as if he was whitewashing anything. When I gave my statement to the review team, it was a lengthy statement. There's pages missing out of it.

I got it for the first time the other day, and there were things that I said to the review team that have never appeared. They aren't even in my statement. They've never appeared in the review. One of those statements is, "Why did Waco happen and what could we do to prevent it in the future?" It's not there, it's not in my statement. It never ended up in the review report.

Mr. ZELIFF. If Ron Noble is so devoted to the line agents at ATF, would he have framed the Treasury report in such a way that led to the firing of ATF agents for a supposed failure that was never in the original plan?

Mr. HARTNETT. I can't answer that, sir, but I know what he said. I know what I read in the Treasury review, and what I'm saying is there were false statements in there, distortions, very significant omissions, testimony of Davidians were there and what they said, what the other agents said. It's like only one-half was given.

Like these men, one side or the other, are lying. Like nobody's ever been involved in a homicide or a tragedy before. That's not true. They called conflicting statements lies, and that's not right. These men went through the greatest tragedy they ever had in their lives and because they have conflicting statements that's a lie? That's not right. These men went through a terrible situation, and it's not unusual. I've handled a hundred homicides, hundreds of them, and people remember things the day after, 6 months later, a year later, and that doesn't mean they're lying. That means they've just been through a very traumatic condition.

Mr. ZELIFF. Did you ever see the words "element of surprise" anywhere in writing prior to the start of the review of the raid?

Mr. HARTNETT. Prior to the—I saw it in the media.

Mr. ZELIFF. But you never saw it written down. You never saw it in a report, you never saw the words "element of surprise" anywhere at all?

Mr. HARTNETT. Prior to the raid?

Mr. ZELIFF. Prior to the raid.

Mr. HARTNETT. No, sir.

Mr. ZELIFF. So basically it was not a part of the raid plan itself?

Mr. HARTNETT. That terminology, that's correct.

Mr. ZELIFF. That terminology. In fact, the report describes a meeting at which the condition of the element of surprise is allegedly discussed and Mr. Noble is assured that it is in the plan. But as we saw from Mr. Higgins' handwritten notes in that meeting the only reason to abort that was mentioned was embarrassment to Secretary Bentsen if it should go wrong. In fact, the element of surprise was never in that plan. Is that correct?

Mr. HARTNETT. The terminology. Secrecy was a part of the plan, sir.

Mr. ZELIFF. One final question so that the record may stand clearly on its own. Do you believe that these facts demonstrate an intent to cover up the truth by the Treasury report?

Mr. HARTNETT. Yes, yes, I do.

Mr. ZELIFF. By Ron Noble, specifically?

Mr. HARTNETT. Yes.

Mr. ZELIFF. OK. There is one area that I would like to visit with you, Mr. Hartnett, while we have the benefit of your remarkable candor. If you would, just how did Mr. Chojnacki and Mr. Sarabyn get their jobs back?

Mr. HARTNETT. I don't—I don't think I could answer that, sir. I know that they appealed and they got their positions back. The only thing I've heard, that one of the charges against them was that they lied to their supervisor. I was their supervisor. They didn't lie to me. They made mistakes, mistakes in judgment, but I don't believe they intentionally led our people into that disaster. I never will.

Mr. MCCOLLUM. Thank you very much, Mr. Zelfiff. Your time has expired.

Ms. Slaughter, I think you're next in line.

Ms. SLAUGHTER. Thank you, Mr. Chairman.

Mr. Hartnett, I want to follow up on that a little bit, if I may. This plan, dynamic entry, does that say to you element of surprise? Can you do a dynamic entry if somebody knows you're coming?

Mr. HARTNETT. As I testified the other day, dynamic entry is being tossed around here and I've been on thousands of raids and I couldn't give you a definition.

Ms. SLAUGHTER. Well, my understanding from all these hearings is you had two plans: siege and dynamic entry. Dynamic entry was chosen. Were you part of that choice?

Mr. HARTNETT. I approved the plan, but not the terminology.

Ms. SLAUGHTER. OK. You approved dynamic entry over siege. Does dynamic entry say anything to you about surprise?

Mr. HARTNETT. I don't think I understand your question, ma'am.

Ms. SLAUGHTER. Well, what would you think would be an element of dynamic entry if it would not be surprise?

Mr. HARTNETT. That raid, a condition of that raid was secrecy, surprise, absolutely.

Ms. SLAUGHTER. Does secrecy to you mean surprise?

Mr. HARTNETT. Yes, absolutely.

Ms. SLAUGHTER. OK. Then why did you have some sense that that was not important?

Mr. HARTNETT. Because after the raid it was used against my people. That terminology is what sets them up. It's like because they didn't catch everything that happened, because they didn't recognize things that were said to them or see certain things, that they didn't follow the order, an order that Ron Noble said was given to them to abort if they didn't have the element of surprise. I didn't give them that order.

But did I expect that raid, a condition of that raid was based on safety, security, surprise? Yes. That's why I sent the undercover agent back in the night before. I wanted to know what Koresh was doing.

Ms. SLAUGHTER. Did you approve the notification of the press, the media?

Mr. HARTNETT. Approve the notification of the press?

Ms. SLAUGHTER. As I understand, Ms. Wheeler had talked with media ahead of time.

Mr. HARTNETT. No, ma'am, I had nothing to do with the press.

Ms. SLAUGHTER. You didn't know anything about that?

Mr. HARTNETT. No, ma'am.

Ms. SLAUGHTER. Wouldn't that have taken some of the element of surprise off what you were doing since—

Mr. HARTNETT. I don't think what we—

Ms. SLAUGHTER [continuing]. The tipoff, as I recall it, Mr. Hartnett, came from a postman who got it from a television man; correct?

Mr. HARTNETT. That's correct, he got it from a TV cameraman. That TV—

Ms. SLAUGHTER. Who had been told by?

Mr. HARTNETT. By an employee—well, no, told by another Channel 10 person—here's the way it went. The EMT, the Emergency Med. Evac. people were hired. A woman there had a boyfriend with Channel 10. She tells her boyfriend. Her boyfriend and she have a meeting.

Now this is what I've been told, this part. They have a meeting at Channel 10 and they send their people out to the compound to see if there's going to be a raid. This cameraman—

Ms. SLAUGHTER. They're staked out, aren't they, throughout? They're at the road out there where they see the postman, as he comes by? We're here because there's going to be a raid, ATF is coming?

Mr. HARTNETT. No, the postman, or the—from what I understand, that cameraman was lost. He walked—

Ms. SLAUGHTER. Was lost?

Mr. HARTNETT. Lost. And he sees the postman. Now, it's Sunday and this postal truck is driving down the road and he flags him down and asks him where the compound is, and the Davidian says

to him, why do you want to know? He says because ATF is going to conduct a raid here and there's going to be shooting. You know, I've never been asked why all these people died and it was because of that irresponsible act that everybody—

Ms. SLAUGHTER. Well, I'd like to find out how that irresponsible act came about because it seems to me, with all the planning and all the work that you did, somehow or other the media got involved in that. I'm very curious about that connection.

Let me yield the rest of my time to my colleague from New York, Mr. SCHUMER.

Mr. SCHUMER. I thank the gentlelady for yielding. So in effect, what you're saying, Mr. Hartnett, is that surprise and secrecy basically mean the same thing?

Mr. HARTNETT. You can call them the same thing if you want.

Mr. SCHUMER. So when Mr. Zeliff said, well, you never heard the terminology "element of surprise," did you hear talk about secrecy and not letting Koresh know of the raid?

Mr. HARTNETT. Yes.

Mr. SCHUMER. OK. So the one thing you would dispute, just to be fair and put it on the record, is that you hadn't heard that the raid should be called off if the element of surprise or secrecy was broken; is that correct?

Mr. HARTNETT. That's correct.

Mr. SCHUMER. That's your dispute, not that there wasn't surprise intended to be surprise, secrecy, call it what you will?

Mr. HARTNETT. That's correct.

Mr. SCHUMER. Because if you were throwing a surprise party for one of your colleagues, you'd want some secrecy there, right?

Mr. HARTNETT. Yes, sir.

Mr. SCHUMER. Thank you. The next question I have is of Mr. Merletti, who did the review.

Mr. Merletti, what would you—and by the way, I would say that—go ahead, Mr. Merletti. You've heard Mr. Hartnett's critique of what you found in the report. First, do you see any difference between element of surprise and secrecy?

Mr. MERLETTI. I see no difference. The element of surprise is secrecy.

Mr. SCHUMER. Exactly.

Mr. MERLETTI. It's basic to a dynamic entry.

Mr. SCHUMER. So it's a difference without a difference.

Mr. MERLETTI. Correct. It's terminology. It means the exact same thing.

Mr. SCHUMER. Everyone, from Mr. Hartnett to Mr. Chojnacki to Mr. Sarabyn to Mr. Buford, everybody thought that this raid should be conducted under some form of secrecy?

Mr. MERLETTI. Absolutely. If they had reached the position in ATF, top management—

Mr. SCHUMER. Absolutely does the job, because he's going to cut me off pretty quick these days.

The next question I have is what is your reading of whether—and you interviewed everyone under the sun in this and came out. What is your reading as to whether it was part of the plan to go ahead if the element of secrecy, shall we now call it, was broken?

Mr. MERLETTI. They should not have gone ahead if the element of surprise was lost.

Mr. SCHUMER. Did the higher-ups know that?

Mr. MERLETTI. Everyone knew that. That is so basic to law enforcement. They even approached the compound in two trailers—

Mr. SCHUMER. Just let me—we're trying to do it within 5 minutes. I don't mean to cut you off because I know you're a friendly witness to us, but as Ms. Slaughter had said, part of dynamic entry is obviously an element of surprise or secrecy, without any question, and anyone from top people through Mr. Hartnett on down would know that that had to be part of the case, correct?

Mr. MERLETTI. Absolutely.

Mr. SCHUMER. Thank you. Thank you, Mr. Chairman. I thank the gentlelady for yielding.

Mr. MCCOLLUM. I yield 5 minutes to Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman. One of the things that I hope to do today is try to get into some of the personnel aspects of this. As you know, I chair the House Civil Service Subcommittee. And really, you know, I think ATF and law enforcement, Federal law enforcement has taken quite a few bruises the last few weeks.

First of all, discovering last week, when Mr. Hartnett made certain accusations or comments relating to hiring and firing and blames omission and that were, again, repeated here, I think that we need to find out through these hearings or if necessary, I intend to conduct hearings in September and October in the Civil Service Subcommittee if we don't get to the bottom of some of these personnel matters. But again, I think the public is dismayed just going home this weekend, they wonder what's going on with ATF, with the Good Old Boys Roundup, with the hiring and blame, sort of the finger pointing on who's responsible for this. It's not sort of like Congress or some other bureaucratic activity. We're dealing with law enforcement, Federal law enforcement. So there's a lot of serious concern about what's going on.

Mr. Potts, who I guess was with the Department of Justice, who oversaw the later part of this, was—and was disciplined and then elevated to Deputy FBI Director, since I guess they found some shredded documents, and has now been demoted, don't you think—well, Mr. Black, you're a personnel—you were in charge of personnel. Don't you think that this raises some serious questions about Federal law enforcement, all this going on?

Mr. BLACK. I'm not sure what your question is, Congressman.

Mr. MICA. All these incidents, what's been described here, the finger pointing, the blame, the hiring, the firing, the demotions, the elevations, and then the rehiring, don't you think this sends a bizarre message to the American public?

Mr. BLACK. Let me just say as the official responsible for the decision to remove the two individuals, Mr. Sarabyn and Mr. Chojnacki from their positions, in no way when we made that decision did we doubt—

Mr. MICA. But again, all of these things do cast a bad light on ATF and the other agencies; is that correct?

Mr. BLACK. Yes, I think they do.

Mr. MICA. Mr. Noble, when you were up before I asked, when was this report produced, the Treasury report? I'm sorry, Mr. Noble.

Mr. BLACK. Mr. Noble's not here.

Mr. MICA. I apologize. Mr. Merletti. When was this produced?

Mr. MERLETTI. Sir, when you say produce, what do you mean by that?

Mr. MICA. What's the publication date?

Mr. MERLETTI. September 30.

Mr. MICA. September 30.

Mr. MERLETTI. 1993.

Mr. MICA. Were you aware of this document, "Recommendations to Experts for Improvement in Federal Law Enforcement After Waco?"

Mr. MERLETTI. Sir, that is the Justice report.

Mr. MICA. Yes. But it's also from Treasury and also Justice, a directive memo in the very front; is that correct?

Mr. MERLETTI. I don't know, I had nothing to do with the publication of that book, sir.

Mr. MICA. Were you aware of this publication when you were working on this report?

Mr. MERLETTI. I don't believe that publication existed when we were working on our report. I believe they were working on that report.

Mr. MICA. Are you aware of some of the contents of this report?

Mr. MERLETTI. I was never given the report.

Mr. MICA. Well, in this report, and I'm not sure if any of the other of you are aware of this report. I guess one of the major points that I want to get to before we get into personnel is the question of the buildup of arms and the situation at the Branch Davidian compound.

This report, and they retained, I guess, the director of Harvard Religious Studies as one of the experts, says on—under his report, indeed, it seems possible that the large arms buildup that led ATF to carry out its initial February 28, 1993 assault on the compound, may have been in response to Koresh's interpretation of a three days long session of police target practice held within ear shot of the Mount Carmel compound in March 1992.

It was reported in our July 1 briefing that Koresh and his group interpreted the target practice of Los Angeles police department and other police groups, which the Davidians apparently attributed incorrectly to ATF, in religious terms as a brazen show of force. Were you agents aware of this incident a year before?

Mr. CHOJNACKI. No, sir, we didn't find out about that specific incident until after the raid.

Mr. MICA. You were not aware?

Mr. SARABYN. That's correct. We did not find out until after the raid.

Mr. MICA. Mr. Black, were you aware of this?

Mr. BLACK. No, sir.

Mr. MICA. One of the other things that seems to be the question of the day here is—and also the head of New York University Medical Center, a psychiatrist who was also retained to look at this matter said, and I quote from his report, "Certainly an armed as-

sault by a hundred agents had to be seen as an attack, independent"—underlined—"independent of who fired the first shot."

If an armed individual enters your home by force and you have reason to believe that person represents a mortal threat, you are allowed to fire a weapon in self-defense in most States. Is that correct, Mr. Sarabyn? Is it correct in Texas? I'm not an attorney.

Mr. SARABYN. Well, you know, an agent going forward there, if he's in fear of his life, he can—he could take the first shot.

Mr. MICA. But this says that, really, that these people—well, first of all, in the first part of the report it said the Branch Davidians had an apocalyptic world view in which they expected the attack, an attack from the outside world. The reason for arming themselves was to protect themselves from such an expected attack. Were you aware that they were expecting this attack?

Mr. SARABYN. Yeah, through his briefings, that's—

Mr. MCCOLLUM. Mr. Mica, your time is up. I'm sorry, the red light's been on a little while. I hate to cut you off at this point.

Mr. Brewster.

Mr. BREWSTER. Thank you, Mr. Chairman.

Mr. Rodriguez, you say you were very clear in explaining that the element of surprise had been lost?

Mr. RODRIGUEZ. Yes, sir, that's correct.

Mr. BREWSTER. You don't have any doubt in your mind that you explained that quite well?

Mr. RODRIGUEZ. There was no doubt in my mind, sir.

Mr. BREWSTER. OK. Did you expect the raid to be called off when it was lost?

Mr. RODRIGUEZ. If I could explain a little bit further, when—once I contacted Sarabyn, I did leave the compound for two reasons. One, as I had told two of my colleagues that followed me outside, I had to go and talk to Chuck. I knew I still had time and I knew Mr. Sarabyn was at the command post. Besides, I had told the people at the compound that I was going to go meet somebody for breakfast. But I left for the sole purpose of contacting and talking to Mr. Sarabyn at the command post and talk things over with him, because we didn't have a really long enough conversation on the telephone. Therefore, I went to the command post, I went there for the sole purpose of talking to him. And, yes, I wanted to stop the raid, of course.

Mr. BREWSTER. You wanted to stop the raid?

Mr. RODRIGUEZ. Unfortunately, I got there too late. When I got there, they had already proceeded with the raid.

Mr. BREWSTER. OK. You apparently were fairly close to Koresh and were in the compound from time to time and went through Bible studies, et cetera. In your opinion, what would have happened had he been arrested in town prior to the raid?

Was there anyone else in that compound that had the charismatic ability to put together the resistance that occurred with Koresh there?

Mr. RODRIGUEZ. In my own opinion, knowing how they were and their structure, for—in order for that to work, you would have to take down Koresh, Mr. Schneider, and their attorney. If you just took down Mr. Koresh, you still had Mr. Schneider, the attorney, and the people to deal with.

What they would have done is they would have gone to negotiations that they wanted to talk to Koresh and wanted a sign from Koresh as to what to do. Therefore, in my own opinion, taking Koresh down would not have solved the problem.

Mr. BREWSTER. So in your opinion, even if they had taken Koresh down, and a siege had begun, there would have been the same ending that occurred?

Mr. RODRIGUEZ. Sir, you got to realize, you got to know these people. Their destiny was set way before ATF got there, way before the FBI got there. That's what they lived for. Their destiny was to die and then later come back as the chosen few by God. That was their destiny.

Mr. BREWSTER. OK. Couple other questions, very quickly.

Mr. Cadigan, we talked about ammunition briefly a while ago. I think you correctly stated that any high-powered rifle, 22, 250, 270, 30 ought 6, 300 Win mag, would penetrate bulletproof vests with ordinary hunting ammunition, am I correct?

Mr. CADIGAN. Most of the vests that I know of, yes, sir.

Mr. BREWSTER. OK. There's what, maybe 50 million of those weapons across America today in ordinary citizens' hands that are hunting weapons?

Mr. CADIGAN. Yes, sir.

Mr. BREWSTER. With no special ammunition, just with regular hunting ammunition?

Mr. CADIGAN. In the—with all of the people in the United States? Yes, sir.

Mr. BREWSTER. Yes, OK.

Ms. Wheeler, I heard statements that you had contacted some of the media the night before. Is that correct?

#### **STATEMENT OF SHARON WHEELER, SPECIAL AGENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Ms. WHEELER. What happened, and—I'm sorry. What happened is that the day before the raid, my boss, Mr. Royster, came up to me and he gave me the name of a reporter at Channel 4 in Dallas and said that after the raid occurs, I want you to contact this reporter.

I told him—it ended up being on a Sunday instead of a Monday. I did not have weekend contact numbers. I told Mr. Royster that if I just contacted one station in Dallas, that the other two stations would eat me alive.

Mr. BREWSTER. What was going to be the purpose for contacting the stations? I mean, my goodness, wouldn't they find out quickly enough?

Ms. WHEELER. Well, we expected it to go smoothly, sir. We didn't expect this to happen. What happened, if I may continue, is that I contacted Channel 8 and Channel 5 in Dallas. I never mentioned the word "Waco." I never mentioned the word "raid." I just said we might have something going on here in Dallas this weekend and I'd like to have a weekend contact number. That's what I was given. That was all the conversation, that was all that occurred.

Mr. BREWSTER. But once again, what was the purpose of contacting them? Were you actually seeking publicity for the agency?

Ms. WHEELER. Absolutely not, sir.



Mr. BREWSTER. OK. Maybe, then, I don't understand the purpose for contacting them.

Ms. WHEELER. Well, he wanted me to contact one station. The only reason I made the two calls was so that I would have weekend contact numbers.

Mr. BREWSTER. Yes, ma'am, I understand your call.

Ms. WHEELER. OK. Mr. Royster's decision was to give me just one number. If—we were planning on having a press conference when the raid was over, that's true. If there was evidence of a violation found, that's common procedure after you have a raid or a large raid of that kind. We had prepared—were prepared to have a press conference and I was just getting numbers for that purpose. We did not alert the media and tell anyone about the raid in advance; that was not what happened.

Mr. BREWSTER. OK. One—

Ms. WHEELER. I'm sorry.

Mr. BREWSTER. One other question. My time is about out. I don't know who to ask this one to, but in the Ways and Means Oversight Subcommittee hearing that we had when I was on Ways and Means, a question came up concerning in the second warrant it asked for a raid in the cover of darkness, therefore I seek permission for a nighttime after 10 p.m. warrant. I take it, Mr. Merletti, that was FBI, because this was after the siege had begun. I was curious, then, about the daytime aspect of the final conclusion.

Mr. MERLETTI. Sir, I'm—I'm not sure exactly what you're talking about.

Mr. BREWSTER. OK. But it's an affidavit of the warrant, the second warrant that was done. I'll talk with you after the break.

Mr. MCCOLLUM. Thank you, Mr. Brewster. Your time is up.

Mr. Souder.

Mr. SOUDER. I yield my time to Mr. Mica.

Mr. MICA. Again, before we get into some of the specific personnel questions, although this is somewhat related, Mr. Rodriguez, I can't see without my glasses.

Mr. RODRIGUEZ. Yes, sir.

Mr. MICA. But I can't read with my glasses.

Mr. Rodriguez, this is really sort of a—a very strange, unconventional religious group, wasn't it? But they had some elements of belief that were common with other common religions; is that correct?

Mr. RODRIGUEZ. As I understand, as I understood Koresh, he broke away from those that were—from those religions that were very common to the—to the Book of Revelations. That's why he broke away and started his own.

Mr. MICA. But it was—you know, they shared some common beliefs, even some things that you talked about a little while ago, about maybe judgment day and things of that sort, didn't they?

But it was really strange when it went, and this is again from this report of the experts on the improvements in Federal law enforcement after Waco. In their report they said that this group, you know, had such a different, a different philosophy of procreation, which apparently motivated wives to leave their husbands' marital beds for Koresh's, those husbands to embrace celibacy and parents to allow Koresh sexual relations with their minor children. Did you know about this at the time of the raid?

Mr. RODRIGUEZ. Yes, sir, I had some prior knowledge of that. Yes, sir.

Mr. MICA. So you knew about this. In fact, isn't it true that in the group you spoke about that he broke off with, back in I guess in 1990, there was a meeting in, I believe, the Waco Federal Courthouse in which the other Secretary had brought out affidavits, I believe, from Australia, paid \$6,000 to an investigator and told Federal officials that this was going on. Were you aware of that at the time of the raid?

Mr. RODRIGUEZ. I was just aware of whatever information I obtained from Mr. Aguilera at the time.

Mr. MICA. So, but this was, again, a highly unusually motivated group. Had you had any training to deal with this particular type of religious group, cult, or whatever you want to call it?

Mr. RODRIGUEZ. No, sir. Everything that I learned, I learned it while I was inside. I would like to answer your question—

Mr. MICA. I don't know if you've read this, but the report says that ATF and other law enforcement agencies should have some independent counsel and advice, and also some training for some of these agents that deal with these groups. There are other groups like this out there, aren't there?

Mr. RODRIGUEZ. But—no, sir, they're all different. That's why I wanted to answer your question. Koresh had his own version of what he believed. He discussed that with me many times, how—how other priests or philosophers from the University of Baylor had attempted to argue with him and his beliefs. He spoke many times of that.

Mr. MICA. OK.

Mr. RODRIGUEZ. His was unique. His was very unique and they're not all the same.

Mr. MICA. Mr. Sarabyn and Mr. Chojnacki, through your intelligence from Agent Rodriguez, you knew that Koresh expected ATF to come for him someday, didn't you?

Mr. SARABYN. Yes, sir.

Mr. MICA. And Mr. Chojnacki.

Mr. CHOJNACKI. Yes, sir.

Mr. MICA. Rodriguez told you that Koresh spoke about ATF coming all of the time, didn't he?

Mr. CHOJNACKI. That was my perception, yes, sir.

Mr. MICA. Did he tell you that? Did you also know that Mr. Koresh expected to lead what was termed a "fierce battle?"

Mr. CHOJNACKI. Yes, sir, but we didn't know if he meant in the physical sense or in the metaphysical sense.

Mr. MICA. Mr. Sarabyn.

Mr. SARABYN. In the same thing, he talked about, you know, with Joyce Smith, fires, you know, you haven't seen L.A. yet or whatever. So we weren't exactly sure what he was talking about.

Mr. MICA. But wasn't it, you know, a given fact that, in fact, his fear of ATF and what you had heard from Mr. Rodriguez and others, that you would expect Mr. Koresh to defend himself and his other followers? Is that correct?

Mr. SARABYN. It is hard to say, because, you know, every criminal or whatever that we deal with, a lot of them say, you know,

I'll never be taken alive. I'm never going to do that. So I mean it's——

Mr. MICA. Again, I'm not an attorney, but this incident took place in Texas and it's my understanding that they have some very, very specific laws, pretty much on the side of the individual citizen when someone comes and attacks their residence. Is that correct? I mean——

Mr. CHOJNACKI. I really don't have much knowledge of the Texas statute record regarding defending your premises other than——

Mr. MICA. You don't consult that as Federal agents when you get into a situation like this, what the local situation is?

Mr. CHOJNACKI. I have no knowledge of any law that allows a person to fire at an appropriately identified police officer attempting to execute a warrant. That's the distinction I think. We weren't burglars.

Mr. MICA. Mr. Hartnett, you had said you disagreed with Mr. Merletti, excuse me again without my glasses—about some comments he made about assessing the element of surprise. Did you want to respond now?

Mr. HARTNETT. Well, I've always disagreed with that terminology, ever since the Waco review came out. I think that it's a created phrase, and I don't mean to mislead the committee.

You know, I've testified many, many times that a part of the raid was secrecy. But a part of the raid was not specifically directed toward those commanders when they say they were given a direct order. That is just not true. They just were not given a direct order.

Mr. MCCOLLUM. Thank you very much. Mr. Mica, your time is expired.

Ms. Jackson Lee, you're recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, I thank you very much and I say almost good afternoon to all the witnesses. I appreciate the seriousness of this morning and also your presence here.

I indicated, and I'll do this very quickly, that whenever I would begin these questions I would always acknowledge that a tragedy has occurred and we have lost lives, ATF officers, children, adults—and it is certainly a tragedy. I'll also admit and indicate that I want this to be resolved so we don't have this happen again.

We need to coordinate Federal law enforcement agencies so they talk with each other and work with each other. We need to get a greater understanding and knowledge of cults, sects, or however you want to describe these whose beliefs are far different from many of us.

And, Mr. Hartnett, I really appreciate the affection—this is not a question for you, sir. I just want to appreciate the affection and respect that you have for the men and women upon which you have supervised.

Let me simply suggest, however, the common sense was not in place, secrecy, element of surprise, semantics. If we were in a situation that would bring about this tragedy because the surprise was eliminated, then we have a situation that we should have pulled back on. But I do want to move forward to questioning, and I want to welcome the Deputy Secretary of the Treasury, for I know the responsibilities, Mr. Altman, that you would have had. And this is a series of questions because last week in your absence there was

much made about a memorandum that is recorded in the documents as 00019008, and I hope all of the committee members will have this in front of them.

It was dated April 15, 1993. Much was done with this and it was waved around and it was suggested that there was, in fact, a cover-up, a conspiracy, that you may have been in the midst of it. And I read this simply as a document of information. And I don't want to put words in your mouth, but I view this as part of your responsibility, fair responsibility to apprise your superior, the Secretary of the Treasury, and I find some interesting points in it, sir.

Let me begin by asking you a question. Simply, why did you write the memorandum?

**STATEMENT OF ROGER ALTMAN, FORMER DEPUTY  
SECRETARY, DEPARTMENT OF THE TREASURY**

Mr. ALTMAN. It was my practice to communicate often in writing to Secretary Bentsen, matters of significance that were occurring in the Department or that I was involved in.

Ms. JACKSON LEE. And this was written on April 15. As I understand it, the FBI took over the HRT team on March 1, 1993. This was written April 15, 1993, another famous day in your life as well, I imagine. Everybody's filing taxes at that time.

But in any event, did you, by this memorandum, in light of the fact that the FBI had taken charge, expect Secretary Bentsen to do anything with this memorandum—make any decisions, call off any actions, with this memorandum?

Mr. ALTMAN. No, I didn't. The memorandum itself makes clear that this was the Attorney General's responsibility.

Ms. JACKSON LEE. So did Secretary Bentsen have any authority at that time on April 15, 1993, to engage in any activity regarding this very tragic situation?

Mr. ALTMAN. No, he didn't. And I find suggestions that he somehow failed to exercise his responsibility in those matters quite misplaced.

Ms. JACKSON LEE. You go on to say, and I appreciate the words that you offer here, you talk about the gas, but you have an interesting—and we're not expecting you to be an expert on the gas and I don't pretend to be an expert and we will have those who are. But you do say that the gas would not be followed with an assault.

A simple statement, but at least a hopeful statement, which might suggest—and, again, I don't want to put words in your mouth—that there was not this conspiracy to do something tragic. You obviously were hoping that something more tragic would not happen. Because had we not already had deaths that occurred already?

Mr. ALTMAN [Nods head up and down].

Ms. JACKSON LEE. So there were tragedies that occurred on the date of the raid, ATF officers and Davidians were lost. So what do you think you were saying when you say the gas would not be followed by an assault at that time?

Mr. ALTMAN. My recollection is that that's what Ron Noble informed me of.

Ms. JACKSON LEE. You were conveying that information from another individual in Treasury who we'll hear from as well; is that my understanding?

Mr. ALTMAN. The memorandum begins by noting that Ron Noble informed me of the Attorney General's weighing the FBI request and so on.

Ms. JACKSON LEE. You mentioned some comments about the gas, but are you an expert in the elements of the qualities of the gas?

Mr. ALTMAN. No, I know nothing about that.

Ms. JACKSON LEE. About dissipation or anything else, you would not be an expert? And so you might also have been conveying information at that time?

Mr. ALTMAN. That is the only possibility.

Ms. JACKSON LEE. You have another sentence here that says the risk of tragedy—I think I asked something similar just a little earlier, but let's try to explore that a little bit. The risks of a tragedy are there. Again, when this raid took place, at least almost two months prior that time, a tragedy had occurred already; is that correct? Lives, as I said, ATF officers; you were aware of that.

Mr. ALTMAN. Yes, ma'am.

Ms. JACKSON LEE. You were aware that lives had been lost among the Davidians as well.

And so you were not saying anything more than what was already going on. It was a tragedy that was now occurring, is that my understanding? Or would you want to expand on that? Let me again not try to put words in your mouth on that.

Mr. ALTMAN. Well, I think my point was just to reflect instincts that using such gas on the compound involved risks. My comment related to the prospective action, not the past action.

Ms. JACKSON LEE. And again, was it based upon information that you had received or just that you were making an assessment just on your own maybe beliefs or thoughts?

Mr. ALTMAN. It was instinct.

Ms. JACKSON LEE. And in that assessment, however, you would not call yourself an expert?

Mr. ALTMAN. No, ma'am, far from it.

Ms. JACKSON LEE. You did not have any ability at that time to—

Mr. MCCOLLUM. Ms. Jackson Lee.

Ms. JACKSON LEE [continuing]. Call off any potential action.

Mr. ALTMAN. No, ma'am.

Ms. JACKSON LEE. And so this is an informal memorandum?

Mr. ALTMAN. Yes, it is.

Ms. JACKSON LEE. I thank you, Mr. Deputy Secretary.

Mr. MCCOLLUM. Thank you, Ms. Jackson Lee.

Mr. Ehrlich, you're recognized for 5 minutes.

Mr. EHRlich. Thank you, Mr. Chairman.

Mr. Rodriguez, I appreciate your testimony here today. I want to get back to the chronology of events just so everyone understands what went down and when. Picking up on your earlier testimony, two phone calls, you are with Koresh, correct? He gets very nervous. Can you pick up the chronology of events from that time?

Mr. RODRIGUEZ. Yes, sir. As I said, he turned to me and said, "Robert, neither the ATF or National Guard will ever get me. They got me once and they'll never get me again." When he said

that, I put my head down and what clicked in my head was when he said National Guard. At that time, I thought maybe I had stayed in there too long because I was supposed to come out by 9:15.

Mr. EHRLICH. And what time was this, sir?

Mr. RODRIGUEZ. Oh, sir, it was before 9.

Mr. EHRLICH. All right.

Mr. RODRIGUEZ. And I looked down and I kept wondering if I had stayed in too long. At that time, he gets up and he walks over to the window directly in front of me. He opens up the shade, looks out both sides and I am looking at him and again he turns to me and says, "They're coming, Robert. The time has come." At that time, I knew for sure that—that he knew, he had been tipped off.

Mr. EHRLICH. And what did you do next?

Mr. RODRIGUEZ. I quickly—I felt—I felt very threatened and I stood up, I felt I had to—I had to leave the compound. By that time, there was more—more people that had come into the living room. At first there were only three when we first started.

Mr. EHRLICH. All right, sir. Now, why did you feel you needed to leave the compound?

Mr. RODRIGUEZ. I was threatened because I didn't know—I was afraid that I would be exposed as to who I was. And as I stood there, I looked and I noticed that the door—there's people in front of the door, people behind me, there was no place for me to go. As I was—as I stood there, Koresh went from one window, did the same thing, looked outside, and came back to the other window and again looked outside and said, "They're coming, Robert, they're coming."

Mr. EHRLICH. And there came a point when you left the house, correct?

Mr. RODRIGUEZ. Yes, sir. I stood there and it was like he wasn't listening to me. At that point, I was trying real hard to keep my composure and I kept telling myself to relax, relax.

Mr. EHRLICH. What was going through your mind at the time? Was it your need to contact your superiors?

Mr. RODRIGUEZ. I needed to get out and advise my superiors of what was going on.

Mr. EHRLICH. All right, sir. And there came a point in time around 9:15, 9:20 where you left the house, correct?

Mr. RODRIGUEZ. Yes, sir. He finally—he motioned, he gave a head signal, they opened the door for me. I walked out. I got into my vehicle. It took me a while to get it started because I was—by then I was—I was pretty shaken. I quickly went back to the undercover house.

Mr. EHRLICH. Now, how long did that take you, sir?

Mr. RODRIGUEZ. Just maybe—maybe 2 or 3 minutes.

Mr. EHRLICH. Who was present in the undercover house when you arrived?

Mr. RODRIGUEZ. I believe the four what we call forward observers or snipers were present. Mr. Cavanaugh was present and two of my agents that worked with me in the undercover house for the 2 months were present.

Mr. EHRLICH. Now, sir, who were you looking for specifically?

Mr. RODRIGUEZ. Well, what I did, I went into the—to the room where Mr. Cavanaugh was because that is where the stew phone was. I was supposed to use that telephone to call Mr. Sarabyn. When I got there, we all huddled up and I told Mr. Cavanaugh exactly what had happened in the compound, advised him.

Mr. EHRLICH. And what was his reaction?

Mr. RODRIGUEZ. His reaction was we better call Chuck right now.

Mr. EHRLICH. All right, sir. You got on the phone and did just that, correct?

Mr. RODRIGUEZ. Yes, sir, I did.

Mr. EHRLICH. And please detail the nature of that conversation.

Mr. RODRIGUEZ. I got the phone, I called. He came to the phone. The only thing I can't remember was if somebody else answered. I think somebody else answered and he came to the phone.

Mr. EHRLICH. Who is he? Mr. Sarabyn?

Mr. RODRIGUEZ. Mr. Sarabyn.

Mr. EHRLICH. OK.

Mr. RODRIGUEZ. The first thing that came out of my mouth was, Chuck, they know, Chuck, they know, they know we're coming. He says, well, what happened? I explained to him what happened.

I explained to him all the events that took place inside the compound, and his questions were, well, did you see any guns? I said no.

What was he wearing? I advised him of what he was wearing. At that time, he said OK, and that was about the extent of the phone call.

Mr. EHRLICH. All right, sir. Did you request that the raid be called off because the element of surprise had been lost?

Mr. RODRIGUEZ. No, sir. At that time I really didn't have the chance. It was a real quick question and answer thing. He asked me what he was wearing, said OK and he hung up. That's why—that's why I quickly left the undercover house to go talk to him at the command post because I wanted to have a more—more of a lengthy conversation with him about the events.

Mr. EHRLICH. Sir, your purpose with respect to the subsequent trip was to convince your superiors the raid had to be called off, is that correct?

Mr. RODRIGUEZ. Yes, sir.

I would like to make one point on how I stood on that. If I had arrived at the location and advised Mr. Sarabyn what happened, we had a chance to discuss it and I—even if I highly protested their decision to go, if they would have asked me to go with them, as a duty—as a—for my duty as an agent for the Government of the United States and to enforce the laws of the country, I would have gone with them even though knowing that the element of surprise had been lost.

Mr. EHRLICH. I understand that, sir, and I appreciate that testimony. My time's running out. Please detail for me the next event, which was your meeting with Mr. Sarabyn, correct?

Mr. RODRIGUEZ. No, sir. I arrived at the command post and the first thing I asked was, where's Chuck? Where's Chuck? They advised me that he had left.

At that time, I started yelling and I said, "Why, why, why?" They know we're coming, they know we're coming.

Mr. EHRLICH. What reaction did you get, what response?

Mr. RODRIGUEZ. Sir, everything was very quiet, very quiet, and if I remember right, everybody was really concerned. I went outside and I sat down and I remember starting cry—starting to cry until Sharon Wheeler came to me and told me what was going on.

Mr. EHRLICH. Now, sir, was it your understanding when you arrived—

Mr. MCCOLLUM. Mr. Ehrlich, your time, unfortunately, has expired. I'm sorry, it's a good line of questioning. But I can't let you go on under the rules.

Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. Rodriguez, if you would, I would like to continue with you.

Mr. RODRIGUEZ. Yes, sir.

Mr. TAYLOR. Mr. Rodriguez, you have had now a couple of years to look back on everything. Do you think that Koresh knew you were either an informant or undercover agent now that you look back on it?

Mr. RODRIGUEZ. Mr. Taylor, you know, Koresh was suspicious of everybody, everybody, anybody that drove by the compound, anybody that walked in the compound. It's hard to say. All I can say is whether—whether he knew or not, I was able to obtain the information that was needed and I knew how far exactly I could go because he wasn't stupid.

Mr. TAYLOR. Oh, he certainly was not, anybody who can control that many other people's minds and gets them to do things. My question I am leading to is what are the possibilities that the minute you walked out of that door, knowing that you had walked out, he then spread the word, started passing out guns, thinking that he had created the impression that led these two gentlemen to make the call to go ahead and continue with the raid, and that is that although they knew things appeared normal—I know you were concerned knowing the character you are dealing with. But is there a possibility that that was his intent all along was to further the ambush that Mr. Buford so aptly described last week, let some people in the ATF think that they would be walking into a normal situation but it certainly was not his intention for that to be?

Mr. RODRIGUEZ. If I understand your question, are you asking me if he purposely set—set me up so that he—so that ATF would come after him, is that what you are saying?

Mr. TAYLOR. No, sir. My question is, do you feel like in retrospect that he, knew you were undercover or suspected you, and then did nothing in front of you that would lead the ATF to suspect that they were going to have anything other than a peaceful reception when actually, obviously, as soon as you left, in that time that ensued, he passed out the guns and put people into every possible firing position?

Mr. RODRIGUEZ. I do not really feel that he knew who I was. He later found out through the negotiators who I was and when he did find out, he did mention to the negotiators, well, I guess I would have had a hostage.

To the other question, as I said before, Koresh, at the time that I was trying to be—or he was trying to get me to become one of his followers, I was limited to what I could see. To that point, you



know, I would not have been able to see them arm themselves, not—not at that point in time. I don't think he had that much trust in me yet to do that.

Mr. TAYLOR. But for the record, there is a quote in the—what is being referred to in the blue ATF book.

Mr. RODRIGUEZ. Yes, sir.

Mr. TAYLOR. Where you say—and I am quoting you, neither the ATF nor the National Guard will ever get me. They got me once and they'll never get me again. Is that correct?

Mr. RODRIGUEZ. Yes, sir.

Mr. TAYLOR. That's almost verbatim what he said?

Mr. RODRIGUEZ. Yes, sir. I'll always remember that.

Mr. TAYLOR. So he had no intention of surrendering himself alive?

Mr. RODRIGUEZ. Mr. Taylor, we—we could have waited 2 years, you know, 2 years we could have waited. We could have sieged, held the siege for 3 years and the—the same, we would have had the same results.

Mr. TAYLOR. Mr. Rodriguez, I do not doubt that. You don't have to convince me. I have read both sides' testimony.

Mr. RODRIGUEZ. It was—he had—he had so much faith in his beliefs that for him to change his mind in front of his followers would really make him lose face with them. That's why—that's why, you know, he—he held out as long as he could and the one thing he always wanted to do was he was always upset because nobody ever listened to him, nobody ever listened to his preachings.

The bad part about it is until this day, he has still gotten everything he's wanted. He was able to use the media. He was able to use all means to broadcast his—his—his beliefs, and until this day, he's still getting the way he—what he wanted.

We should—this guy, in my opinion, as much time as I spent with him, I hated every moment that I was with him. I got into a role I could not get out of. I hated what he preached. I hated being around with—around him and I hated to pretend that I believed in what he was preaching.

Mr. TAYLOR. He was a sick individual.

Mr. RODRIGUEZ. This man, all he did, in my opinion, spending the time with him and hearing what he preached, to me, he just used the Bible for his own personal gains and as a result, the followers believed in what he said and in the long run, Mr. Taylor, I really and truly believe that we sacrificed four good men and saved the lives of innocent people because eventually if nobody would have confronted them, because of their beliefs, they would have caused something to occur and eventually we would have had to confront him.

Mr. TAYLOR. Mr. Rodriguez—

Mr. RODRIGUEZ. And we did so. We did so.

Mr. TAYLOR. And I appreciate you saying that and I'm not cutting you off but I have promised to ask every panelist a question.

Mr. RODRIGUEZ. I understand.

Mr. TAYLOR. That question—and I am opening it up to this panel—some of you are new—is there anything that you have seen or heard or read to justify the murder of the 4 ATF agents you spoke of and the wounding of 20 others? Because if you notice last

week, even the lawyer who defended one of the Davidians who was acquitted read a case law where there is a reason for self defense should a policeman be way the heck out of line, but then turned around and said in his opinion, the police were not out of line.

So for this panel, have any of you seen anything that justifies their death?

Mr. RODRIGUEZ. No, sir.

Mr. TAYLOR. Mr. Williams.

Mr. WILLIAMS. I see no reason why we were fired upon the way we were, identifying ourselves as law enforcement officials. No matter what the reason being in Texas, being a law enforcement officer from Texas before I came to ATF, they had no grounds to stand on by firing upon us.

Mr. MCCOLLUM. Because the time clock has expired, if you want to get each one to answer, they can just be yes and no.

Mr. TAYLOR. Mr. Ballesteros.

Mr. MCCOLLUM. It would certainly help us.

Mr. BALLESTEROS. There's no reason why they should have fired on us the way they did.

Mr. MCCOLLUM. Mr. Rodriguez.

Mr. RODRIGUEZ. No, sir. No reason whatsoever.

Mr. MCCOLLUM. Mr. Buford.

Mr. BUFORD. No, sir.

Mr. MCCOLLUM. Mr. Altman.

Mr. ALTMAN. No.

Mr. MCCOLLUM. Mr. Cadigan.

Mr. CADIGAN. No, sir.

Mr. MCCOLLUM. Mr. Merletti.

Mr. MERLETTI. Certainly not.

Mr. MCCOLLUM. Mr. Black.

Mr. BLACK. No, sir.

Mr. MCCOLLUM. Mr. Hartnett.

Mr. HARTNETT. No, sir.

Mr. MCCOLLUM. Ms. Wheeler.

Ms. WHEELER. Absolutely not.

Mr. MCCOLLUM. Mr. Chojnacki.

Mr. CHOJNACKI. No, sir.

Mr. MCCOLLUM. And Mr. Sarabyn.

Mr. SARABYN. No, sir.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Your time has expired, then, Mr. Taylor.

At this time, I call on Mr. Heineman.

Mr. HEINEMAN. Thank you, Mr. Chairman.

Mr. Rodriguez, in spite of a lot of things that have been said here, let me commend you on your activities on the day of the raid. It took a lot of guts to do that and to come here and bare your soul.

Were you ever consulted prior to the raid as it relates to tactics and plans?

Mr. RODRIGUEZ. I have been in law enforcement for 18 years. I've had a lot of training in all kinds of tactics and planning. On this particular assignment, I was not involved in any of the tactical operations or planning, no, sir.

Mr. HEINEMAN. Thank you, sir.

Mr. Hartnett, was there a raid planned?

Mr. HARTNETT. Yes, sir, there was. I have never—

Mr. HEINEMAN. Well, were you at the planning session?

Mr. HARTNETT. Well, let me, if I can explain that, sir.

Mr. HEINEMAN. Yes, sir.

Mr. HARTNETT. I was briefed and given an overview of only a couple of pages of what the raid plan was. That was on February 11 and 12, 1993. I did not have the entire raid plan. It was put together just for me and staff.

Mr. HEINEMAN. There was a raid plan, however.

Mr. HARTNETT. Yes, there was a raid plan.

Mr. HEINEMAN. Do you know who put that together?

Mr. HARTNETT. The raid plan was put together by Chojnacki, Sarabyn, and the SRT's. We have been criticized because, from what I gather—and that's why I want to make sure you understand, that we had pieces of it, if you know what I mean, that they hadn't brought it together.

It was right in the middle of an order going out to the field giving them specific instructions on how to—submit a written raid plan, how to bring it together and forward it. It was out for coordination at the time. Mr. Chojnacki or Sarabyn would have to answer if they actually put it into one package at the time before the raid. What I received was written but very, very abbreviated.

Mr. HEINEMAN. The planning session, Mr. Chojnacki—and I am not quite sure how to pronounce your name. Are we doing you an injustice? Is that Chojnacki or?

Mr. CHOJNACKI. Chojnacki is the way my father would say it.

Mr. HEINEMAN. Excuse me?

Mr. CHOJNACKI. Chojnacki is the way my father would say it.

Mr. HEINEMAN. Chojnacki. At the planning session, what were the options as it relates to executing that warrant?

Mr. CHOJNACKI. Well, there were several days of planning sessions, sir. When we initiated planning, we started out with preliminary discussion of probably any kind of option any of the participants could come up with, the things that were I won't say clearly out of line but just from the far ends, both ends of the continuum and brought it down to or narrowed the items that we would discuss further to the kinds of things that we have been discussing all week, a long-term siege, the what has been called over the last several days the dynamic entry technique, the luring of David Koresh off the property and attempting to arrest him somewhere else and instead coming back to execute the search warrant and possibly other options that I can't think of off the top of my head right now, sir.

Mr. HEINEMAN. Were you under any pressure to favor a dynamic entry?

Mr. CHOJNACKI. No, sir. The only reason we favored that was because we thought we could do that type of entry and preserve the safety for our people as well as for the innocents and the defendants.

As Mr. Ishimoto explained, while it seems to be a threatening type of situation, our impression has always been in law enforcement that virtually everybody—not everybody, but virtually everybody under those conditions would see overwhelming forces and the surprise and speed with which you get access to the residence or

whatever the facility is were such that you overwhelm them and take control of the situation before they can get to their guns or create a situation that is dangerous for both sides.

Mr. HEINEMAN. But the surprise element was lost, is that correct?

Mr. CHOJNACKI. Oh, yes, sir, it was.

Mr. HEINEMAN. OK. Now, when you were told by Officer Sarabyn about the conversation he had with Rodriguez relative to his leaving the compound and having spoken to David Koresh, I assume—I'll assume you got that information as Officer Rodriguez had given it. Who did you call in Washington with that information?

Mr. CHOJNACKI. After we discussed the information and I made the decision to go forward, I left that location, which was about 50 yards from the command post, walked to the command post, called the ATF headquarters emergency command center and advised agent John Jensen, is my recollection, that we, that Robert had come out, that we had discussed the situation. I did not see where there was any difficulty with executing the warrant safely and I ordered the agents to go forward. I just passed that information to him. There was no real discussion.

Mr. HEINEMAN. Where in the pecking order did Jensen come from? Was he the Houston SAC?

Mr. CHOJNACKI. I was the Houston SAC, sir. Jensen was a headquarters—an ATF agent assigned to headquarters at that time. I'm not sure what his particular assignment was, but he was not one of my supervisors, if that's what you mean.

Mr. HEINEMAN. OK. Now where is this headquarters, is this in Texas?

Mr. CHOJNACKI. Washington, DC.

Mr. HEINEMAN. Washington, DC.

Mr. CHOJNACKI. Yes, sir.

Mr. HEINEMAN. And do you know whether he told anyone in the supervisory rank to him?

Mr. CHOJNACKI. I don't have any idea who he communicated with, sir.

Mr. HEINEMAN. And thank you. Mr. Chairman, I yield back my time.

Mr. MCCOLLUM. Thank you very much. Mr. Heineman, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

May I add my congratulations to you and the leadership of this committee for deciding to hold hearings on the militia. After all, the militia's involvement in Oklahoma City is really what triggered Waco as some kind of counteraction, and I feel it's important that I tell you that the letters that I and Charles Schumer sent to the Speaker and to Chairman Hyde have now been observed. It's never too late for those hearings.

I would remind you as you Chair this hearing that the role of the National Rifle Association in the investigative process of these Waco hearings has not been responded to, so while we are on this great roll with your leadership, why don't we check that one out, maybe this weekend. These things are glacial, they come slowly, but we are very patient on this side and we will be waiting for a positive response—

Mr. MCCOLLUM. Will the gentleman yield?

Mr. CONYERS [continuing]. Thereto.

And the answer is yes, I will.

Mr. MCCOLLUM. First of all, again, I am going to hold hearings. We will hold a couple days, 1 or 2 at least, on militia later this fall. The Chair does not believe that there is no relationship between the origin of these hearings and the events in Oklahoma City.

Mr. CONYERS. Well, the whole.

Mr. MCCOLLUM. If I may continue just for this one purpose. I had a meeting with both the Attorney General and with the FBI Director in January indicating the desire to have these hearings on Waco and the need to have them to set the record straight, to clarify matters and so forth. There really is no relationship there and the NRA question is entirely separate and unrelated to the militia question.

Mr. CONYERS. OK. It is a lot of my time but—

Mr. MCCOLLUM. You will have another minute or so.

Mr. CONYERS. I am as generous as you are at least. So that there is no complicity, there is no connection between Watergate and Waco. Waco's something we just had to get at all the time.

If it turns out that your time line is correct, then I'll tell the millions of people I have already told that this was a poor reaction to Oklahoma City and I'll stand corrected. But right now, this seems to be get Government law enforcement at any cost.

Mr. Buford, I'm glad to see you back again. Did anything in your experience in law enforcement, military service, and anything else prepare you for the possibility of being ambushed?

Mr. BUFORD. Well, I had—in my military experience I had been caught in ambushes before. I had never been ambushed in my law enforcement experience. I would like to say that I had that experience, but nothing in my background prepared me for what we encountered that morning, no, sir.

Mr. CONYERS. All right. Thank you very much. Sooner or later, with all the testimony pro and con, all the Members of Congress' personal views to which we are all entitled, pro and con, we're going to have to come down on this question. This is one of the central questions in what could have been a much abbreviated hearing. How can you anticipate an ambush?

You can prepare for the possibility, but if you are ambushed, it seems to me that that contradicts almost anything else. Mr. Rodriguez, who worked inside for so long, based on your experience with the Davidians, did you believe that David Koresh and the Branch Davidians planned to kill themselves all along?

Mr. RODRIGUEZ. Yes, sir.

Mr. CONYERS. Expand.

Mr. RODRIGUEZ. Sir, in order to do that, I have to go back to their religious beliefs. And if you follow, as he—as he used to do with me in all my Bible studies with him, if you follow the seven seals during the siege, you could—you could tell that he was following each one step-by-step. You got to understand that that is what he believed.

He believed that he was the Messiah, and he believed that because he believed he had received a message from God, which was seven angels, when he was in Jerusalem and that gave him special

powers. If you look into the Book of Revelations, the seven angels refers to the seven seals.

Mr. CONYERS. So from your point of view and experience you thought that the deaths were necessary to fulfill Koresh's prophecies.

Mr. RODRIGUEZ. Yes, sir. If he were to change his mind at the middle, in the middle of the whole post-siege, his people would have lost all faith in him because all this time, this is what he preached.

Mr. CONYERS. They were preparing for ultimate death.

Mr. RODRIGUEZ. Yes, sir.

Mr. CONYERS. One way or the other.

Mr. RODRIGUEZ. One way or another. That's why they were there—that's why they were there, you know. They didn't mingle with the public. They didn't; they didn't go anywhere. These people were there waiting for the time.

Mr. CONYERS. Well, what could you and the Government have done to prevent the Branch Davidians from doing the things that caused them to kill themselves, the setting of fires, et cetera?

Mr. RODRIGUEZ. That's—that's something I couldn't answer. As I stated earlier, we learned as—as I learned as I was in there, what their, quote, goal in life was. We didn't know that prior to that. I really can't say.

Mr. CONYERS. Is Mr. Ballesteros here?

Mr. RODRIGUEZ. Ballesteros.

**STATEMENT OF ROLAND BALLESTEROS, SPECIAL AGENT,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. BALLESTEROS. Here.

Mr. CONYERS. Mr. Ballesteros, when you approached the front door of the compound to execute the search warrant, sir, did you attempt to identify yourself as a law enforcement officer? I think that would be pretty critical.

Mr. BALLESTEROS. I had been identifying myself as a police officer since I exited the trailers, as were other people, agents.

Mr. CONYERS. So there's no question that they knew who you were, and there was no possibility of misidentification or anything of that nature.

Mr. BALLESTEROS. No, there is not.

Mr. CONYERS. Mr. Buford, finally, isn't it true that every time the Davidians had the opportunity to escalate the confrontation with law enforcement officers they did so?

Mr. BUFORD. Well, it appeared as though they were needing this confrontation and, yes, I believe that they did. And if I might, sir, quickly answer or respond to one of the earlier questions, you asked how this situation could have been handled. And I believe sincerely that if the media had not tipped off David Koresh that we were coming about 40 minutes before we arrived, the plan that we had in place would have prevented any deaths from taking place on that day. And the media——

Mr. CONYERS. That was the postman incident?

Mr. BUFORD. Yes, sir. And those media people were not invited there by ATF.

Mr. CONYERS. Right.

Mr. MCCOLLUM. Thank you, Mr. Conyers.

Mr. CONYERS. Can I also ask Mr. Rodriguez to conclude his response?

Mr. MCCOLLUM. Yes, Mr. Rodriguez.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. RODRIGUEZ. By being inside the compound that morning, everything was normal. If it had not been for the tipoff of the media, I really and truly believe that the raid would have been successful.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Mr. Conyers.

Mr. SHADEGG, you are recognized for 5 minutes.

Mr. SHADEGG. Thank you, Mr. Chairman. Let me follow up just on that point.

Mr. Buford, had you known that Mr. Rodriguez had conveyed what he has clearly testified to this morning to Mr. Sarabyn and Mr. Chojnacki, that is, that the amount of surprise was—and I don't like that term, that—because I think that is a bureaucratic term created later for finger-pointing. Had you known that David Koresh knew you were coming in 40 minutes before you got there, would you have given an order directing agents to go on in?

Mr. BUFORD. Sir, I would like to in hindsight say no, that I would have called it off. But the information that I tried to obtain from Chuck Sarabyn at the time when he came in and told us what Robert had said, I asked where are the men? And my biggest concern in executing this warrant was being able to get in as closely as possible and having the men separated from their weapons.

Mr. SHADEGG. It seemed to me you could get in very close when they knew you were coming and you knew they had tons of weapons.

Mr. BUFORD. Sir, we were able to get to the front door before they had started shooting. Had they known that we were in those trailers, they would have started shooting at us as we arrived in those trailers. It was not the correct decision and I'd like to say that I would have made a different decision, but if I had to make that decision, I probably would have made the same decision, sir.

Mr. SHADEGG. Mr. Rodriguez, I—Mr. Schumer has pointed out he thinks the most significant testimony that's come out today is that this particular panel believes that all the firing started from the inside first and not from any ATF agent. I will tell you, I think the most important testimony of the day has been your riveting testimony of the sequence of events of Mr. Koresh flat knowing that you were coming in and that the ATF was—and that the National Guard was coming in. I want to go back over that. You conveyed that, you believed, to Mr. Sarabyn, is that right?

Mr. RODRIGUEZ. Yes, sir.

Mr. SHADEGG. And what was his reaction when you conveyed it to him?

Mr. RODRIGUEZ. First of all, when I spoke to him, it wasn't like, hey Chuck, I just came out, they know. I think they know something. When I spoke to him, I was very emotional and that's—and I said, "Chuck, Chuck, they know. Chuck, they know we're coming."

Mr. SHADEGG. You thought there was grave danger to your agents' lives, given that Koresh knew this and he had all these weapons, for you to go ahead with the raid at that point time.

Mr. RODRIGUEZ. Yes, sir.

Mr. SHADEGG. Now, you said earlier that all of this was going to happen anyway because of Mr. Koresh's attitude. I assume that had you been able to conduct the raid with surprise, get through the door before anybody knew you were coming, get through the door without them getting the guns out from under their beds, you believe that the deaths might not have occurred, right?

Mr. RODRIGUEZ. Yes, sir.

Mr. SHADEGG. OK. Mr. Sarabyn, let me ask you, you had a conversation with Mr. Rodriguez. You—I am in doubt as to whether you understood that Mr. Koresh knew you were coming. Did you understand that at the time?

Mr. SARABYN. I did not feel he knew that we were coming at that time. When I talked with Robert, like I testified before, I took notes while we were talking over the thing and I have read all of Robert's statements. Robert did a great job, but I think everything that you heard as far as testimony was not passed on to me.

In fact, Robert told the shooting review team, or commanders, that he didn't go into detail or should have said more. When I went through the questions I asked him, you know, he had said specifically Koresh said, you know, ATF and the Guard are coming, but when I asked, trying to determine what he was doing from those questions, he wasn't doing anything; he was shaking, reading the Bible. He was preaching. I determined that, you know, in my opinion, his actions spoke louder than his words, so I didn't feel that anything was happening then. Had there—

Mr. SHADEGG. Do you now—let me just ask you this. Having heard Mr. Rodriguez today, having heard the depth of his emotion about what I think he thinks led to the death of these agents, do you now regret the decision to go forward given that Mr. Koresh apparently clearly did know you were coming?

Mr. SARABYN. Yes, sir. I live that every day. But you know, I didn't—everything he has gone over I didn't know at that time.

Mr. SHADEGG. I just think it's important to get this sequence of events out. Mr. Chojnacki, do you now similarly understand Mr. Koresh knew you were coming, was apparently preparing for you, laying—you can't do an ambush if they don't know you are coming. He was laying the ambush for you. I take it you also regret the decision to go forward at that point.

Mr. CHOJNACKI. Oh, absolutely.

Mr. SHADEGG. Now, that leads to this whole semantics war. As I understand it, what then happens after it is all over is that the higher-ups at ATF say, well, we gave you a direct command not to go if the element of surprise is lost. You never got such a command, did you?

Mr. CHOJNACKI. I not only never received that command, I don't know that anybody above me in ATF said that they gave me that command.

Mr. SHADEGG. And Mr. Sarabyn, you never got such a command?

Mr. SARABYN. That is correct, sir.

Mr. SHADEGG. And I take it it is pretty candid and fair to say what you think is that claimed command, we told them not to go if the element of surprise was lost, was an attempt by the higher-



ups to cover up their negligent mismanagement or their failure to manage this raid.

Mr. SARABYN. They are trying to explain this whole element of surprise issue. You know, first of all, we are telling you we were never given that order.

Second, obviously, we lost the element of surprise; we were ambushed. Our point is we felt that his actions at that time did not indicate to us that we had lost it, but in fact we had.

Mr. SHADEGG. I'm running out of time.

I have one last question. I will tell you, over and over again in these hearings we have heard this line about nothing justifies the murder of these agents, nothing justifies them shooting first. I don't believe anything ever justifies a citizen in meeting a warrant, whether it is a lawful warrant or a fraudulent warrant, with gunfire.

But we have heard this question over and over again saying do you think anything you have heard justifies the murder of these agents. I want to turn that question around, I want to ask it to you this way. Is anything you've heard about how evil David Koresh was, would any of those things justify this Congress in ignoring its oversight responsibility and refusing to look and see if mistakes were made or sloppy practices were used which by the Federal law enforcement agents in the leadup to the Waco raid—which resulted in the death of four agents, the wounding of 20 other agents, and the deaths of 80 civilians including men, women, and children—is there anything you heard that would justify us ignoring our oversight responsibility?

Mr. SARABYN. No, I don't think it should be ignored. Obviously, there were mistakes made. We can't bring those agents back, we can't bring those other people back. But anything we can do to prevent it, I think we owe it to the American people to do that.

Mr. SHADEGG. Mr. Chojnacki.

Mr. CHOJNACKI. I agree with Mr. Sarabyn. We've been waiting for these hearings for 2½ years.

Mr. SHADEGG. Miss Wheeler or Ms. Wheeler?

Ms. WHEELER. I think it is time for the absolute truth to come out from the agents' point of view.

Mr. SHADEGG. Thank you. Mr. Hartnett.

Mr. HARTNETT. Yes, I am very much in favor of the hearings.

Mr. SHADEGG. I am sorry. Mr. Black.

Mr. BLACK. I'm not sure of the question.

Mr. SHADEGG. OK, the question is—let me try and make it clear. We have heard the question over and over again, would anything you have heard in the hearings justify the murder of the agents. I see that as a rhetorical question; nothing justifies the murder of the agents. My question is, anything you've heard in the hearings or before, would it—would those things you've heard justify the Congress refusing to conduct oversight hearings to determine if mistakes were made by law enforcement officers?

Mr. BLACK. No, sir.

Mr. SHADEGG. Mr. Merletti.

Mr. MERLETTI. Sir, I don't know that I'm really in a position to answer that. However, I will say that everything we've heard is in this book. It's here.

Mr. SHADEGG. Mr.—I'm sorry. Mr. Cadigan.

Mr. CADIGAN. Cadigan.

Mr. SHADEGG. Cadigan.

Mr. CADIGAN. No.

Mr. SHADEGG. Sir.

Mr. ALTMAN. I think it is perfectly appropriate for the Congress to hold hearings on this.

Mr. SHADEGG. Mr. Buford.

Mr. BUFORD. Yes, sir, it's appropriate.

Mr. SHADEGG. Mr. Rodriguez.

Mr. RODRIGUEZ. Sir, Phil and Chojnacki know exactly what happened. To this day, I will stand by what I have said and what I have told—I have never changed my story. They have changed theirs many times.

And to this day, they can still sit there and lie to all the agents of ATF that what I said—what I supposedly said—was not said. And it really aggravates me, because for 2 years I have—I have waited and I have waited for some chance to tell all the agents what really happened.

Those two men know—know what I told them, and they knew exactly what I meant. And instead of coming up and admitting to the American people right after the raid that they had made a mistake, that the element of surprise had been lost, that the agent had advised them that they knew they were coming, instead of doing that, they lied to the public and in doing so they just about destroyed a very great agency.

Mr. SHADEGG. Mr. Ballesteros.

Mr. BALLESTEROS. I'd like to concur with Mr. Merletti. There is a lot in the blue book that shows that the truths of what are being brought out here today are questionable. I was in an auditorium along with a large party, I should say, and that blue book it brings out clearly that the element of surprise had been lost and Mr. Sarabyn rushed into the room and made it clear to us that we needed to hurry up because, in fact, Mr. Rodriguez had come out and identified the fact that Koresh had been tipped off and that they knew we were coming.

Mr. SHADEGG. I am sorry. Sir, at the end, I can't see your nameplate.

Mr. BALLESTEROS. One of these. Here we go.

Mr. MCCOLLUM. Mr. Williams is next.

Mr. SHADEGG. Mr. Williams.

Mr. WILLIAMS. I agree that Congress needs to investigate what happened due to the fact that, for all of the agents who went on that compound, who went through the trauma of receiving the—being shot at as they were, that the truth needs to come out. For all purposes, finger-pointing as to who said this or said that is irrelevant to the families of the four agents or the four agents that I saw lost their lives at that compound.

We know for a fact that the element of surprise was lost but at the time we didn't know what the time span was as—how long a time had occurred since he knew that we were coming. To say that—play on words that this is the element of surprise before, after is irrelevant. What happened, happened, and it is time to get the truth out and let it be heard.

Mr. SHADEGG. Thank you very much.

Mr. CONYERS. Mr. Chairman.

Mr. MCCOLLUM. Thank you, Mr. Shadegg.

Mrs. Thurman, it is my understanding that you wish to pass at this time, is that correct?

Mr. CONYERS. Mr. Chairman, could I be allowed 5 seconds, please? Mrs. Thurman has already agreed that if you wanted to take it out of our time on this side, that would be acceptable.

Mr. MCCOLLUM. I would, if Mrs. Thurman is agreeable to that. Is that correct?

Mr. CONYERS. For the record, I have had a number of hearings in the course of my career. This is the first time in my career that I remember 12 people being hauled before a congressional committee to be asked individually if the hearings that they are required to appear at are appropriate, and I'd like the record to reflect that.

Mr. MCCOLLUM. Well, you certainly may, Mr. Conyers.

Mr. CONYERS. Thank you.

Mr. MCCOLLUM. I must say, having that question asked was interesting in light of the fact some people have said that we shouldn't.

Mr. CONYERS. I'm sure they had an opportunity to tell you that these hearings were no good and inappropriate and that would be a pretty risky proposition before the 104th Congress.

Mr. MCCOLLUM. Well, at this time.

Mr. SHADEGG. Point of order.

Mr. MCCOLLUM. I think everybody concurs for the most part they are important, but that's beside the point.

Mr. BARR, you're recognized for 5 minutes.

Mr. BARR. Thank you. I would respectfully direct the gentleman from Michigan to his remarks in the 1993 hearings, which are 180 degrees at odds with his efforts today to make it appear as if we are antilaw enforcement and they are pro-law enforcement.

I mean, the disingenuousness of the gentleman's statements are astounding. The two agents on the end, did I hear you earlier to say that you were stunned with the amount of firepower that came out of the compound when you went in?

Mr. WILLIAMS. Yes, we were.

Mr. BARR. What did you expect Koresh to do? Invite you in for tea and cookies?

I ask that very seriously. How can you stand there as trained law enforcement officers knowing that a massive operation was being mounted against a person—with over 100 men and women in there, with, according to ATF's own documents, hundreds of weapons including, according to ATF, automatic weapons, with thousands of rounds of ammunition—who knew you were coming, who was prepared for Armageddon. How could you have expected anything other than an armed confrontation?

Mr. WILLIAMS. Sir, I execute a lot of warrants. I don't think we were dressed for tea and cookies that day.

Mr. BARR. I'm sorry. I didn't understand that.

Mr. WILLIAMS. We went to execute a warrant. When we went to the door to execute a warrant dressed appropriately in the outfit signifying we were ATF police, if he decided to just open the door, let us in, we still had to go in the dynamic way.

Mr. BARR. Did you expect him to do that, to just open the door and let you in?

Mr. WILLIAMS. No. I didn't expect him to open the door.

Mr. BARR. Well, why were you—I'm just missing something. Knowing everything that had gone on before, knowing how much firepower you believed was in there, knowing the predisposition that you believed would make this man violent, why did you expect anything less?

Mr. WILLIAMS. Having the information that you have now, we didn't have all the information at that time.

Mr. BARR. Yes, you did. It was in your—your superiors did. You may not have. Your superiors did. Let me ask your superiors here. You knew that there were—or you believed that there were hundreds of weapons and thousands of rounds of ammunition in there, didn't you?

Mr. CHOJNACKI. Yes, sir, we did.

Mr. BARR. Did you believe that they were in fact controlled by a man predisposed, by your own information, to be very violent?

Mr. CHOJNACKI. That's correct, sir.

Mr. BARR. OK. Did you tell these gentlemen down here all of that?

Mr. CHOJNACKI. Yes, sir.

Mr. BARR. Then why do you think that they were so stunned when they went in there?

Mr. CHOJNACKI. I believe we were all stunned because we expected that we still had the opportunity to execute that warrant safely.

Mr. BARR. That is so—OK, maybe you did, but that raises some serious questions about your judgment.

Ms. Wheeler, who is Bill Johnston?

Ms. WHEELER. He is the—one of the assistant U.S. attorneys in Waco, I believe.

Mr. BARR. Was he, in fact, the assisting U.S. attorney that was in charge of the investigation leading up to the raid?

Ms. WHEELER. As far as I know.

Mr. BARR. OK. When was your consultation with him concerning your press contacts the evening before the raid?

Ms. WHEELER. I never had a consultation with him.

Mr. BARR. Are there no directives in ATF that when there is an ongoing investigation being monitored, if not controlled by, an assisting U.S. attorney because it involves violations of Federal law that there is to be consultation on any media statements?

Ms. WHEELER. I am not aware of the exact law that pertains to that. I think it would be policy.

Mr. BARR. No, I'm not talking about law. I was talking about policy. You are not—there is no requirement for that?

Ms. WHEELER. No, sir.

Mr. BARR. Exactly what did you tell the media the day or the evening before?

Ms. WHEELER. I called and said that we might have something going on in Dallas and that I needed a weekend contact number, and that's pretty much the extent of the conversation. I was asked by Channel 5 if it involved the World Trade Center bombing and I said no.

Mr. BARR. Is it—is it your procedure that in every case before there is an ATF raid that the media is notified that there might be something going on?

Ms. WHEELER. No, sir.

Mr. BARR. OK, why was this case an exception, then?

Ms. WHEELER. The reason I called was to get a contact number for the weekend.

Mr. BARR. I'm asking why this case was an exception. If it wasn't standard procedure to notify the media a day before an undercover raid was to take place but you did in this case, why was this case an exception?

Ms. WHEELER. I don't understand what you're getting at. I'm sorry.

Mr. BARR. I can't make it any clearer, Ms. Wheeler. I think you do.

Ms. WHEELER. I don't.

Mr. BARR. You have stated that it was not standard procedure for ATF to notify the media prior to a raid, is that correct, that it was not standard procedure?

Ms. WHEELER. Correct.

Mr. BARR. OK. You have also stated that in this case you did notify the media that something was going to be going on. Correct?

Ms. WHEELER. Yes.

Mr. BARR. OK. Why did you do that? Why was this case made an exception? That's all I'm asking about.

Ms. WHEELER. It's not there was made an exception. Mr. Royster had told me that he wanted me to contact Jeff Cillie of Channel 4 when the raid was over. I told him that I could not just contact one channel when this raid was over and that I did not have the weekend contact numbers for the other channels.

He said——

Mr. BARR. Were you given information concerning the seriousness of this raid? Did you know the extent of it?

Ms. WHEELER. Absolutely.

Mr. BARR. Do you still feel it was appropriate to notify the media that something was going on?

Ms. WHEELER. I never said Waco. I never said raid.

Mr. BARR. I know you've said that. You apparently think it was appropriate to have done that even in hindsight.

Ms. WHEELER. Well, I don't believe that that compromised the raid. If I might say, sir——

Mr. BARR. I didn't say it compromised the raid.

Ms. WHEELER. Well, that's what you seem to be insinuating to me.

Mr. BARR. No, I am just wondering why—well, that's OK. Mr.——

Ms. WHEELER. May I—may I say, sir?

Mr. BARR. No, not right now.

Mr. Altman, your memo of April 15 is—that's the most cover-your-rear memo I think I've ever seen. In the one document you say on the one hand that the FBI's concluded that the outlook for a negotiated end to the standoff is poor and that they don't believe it is worth waiting, and then at the end, you indicate that if the

FBI waits indefinitely, Mr. Koresh eventually will concede, covering both sides of the spectrum.

Then you also say the risks of a tragedy are there. Despite some efforts by a previous questioner to defy all semantics and logic and even you didn't stand by for this, that reference to a tragedy doesn't refer to anything in the past, it refers to something in the future. What was the point of this memo to the Secretary if in fact you have already stated that there was no reason to notify the Secretary of things outside of his area of responsibility and you believe that this was outside of his area of responsibility?

Mr. ALTMAN. That's not what I said, Mr. Barr.

I said that it was my practice to inform Secretary Bentsen of matters of significance that were occurring either in the Department or that I was otherwise involved with. He had made a comment, as the memorandum indicates, on Meet the Press, public forum, important forum, so I thought it was appropriate to convey to him what Ron Noble had told me.

Mr. MCCOLLUM. Thank you, Mr. Barr. Your time has expired.

Ms. JACKSON LEE. Parliamentary inquiry, Mr. Chairman.

Mr. MCCOLLUM. Please state your parliamentary inquiry.

Ms. JACKSON LEE. Mr. Chairman, I know that these are hearings, but my question is are these inquiries? I hope all of us will be—

Mr. MCCOLLUM. Regular.

Ms. JACKSON LEE [continuing]. Respectful of the witnesses who are before us because they are not under indictment.

Mr. MCCOLLUM. Ms. Jackson Lee, that is not a parliamentary inquiry. You are out of order. Mr. Bryant, you are recognized, as I assume Mrs. Thurman continues to yield.

Ms. JACKSON LEE. Can I get an answer, Mr. Chairman?

Mr. MCCOLLUM. I indicated to you that is not a parliamentary inquiry.

Mr. BUYER. Regular order.

Mr. SCHUMER. Mr. Chairman, I have a unanimous-consent request.

Ms. JACKSON LEE. I'm concerned about the attitude of the questioner.

Mr. MCCOLLUM. Regular order. Mr. Bryant is recognized.

Ms. JACKSON LEE. I am very concerned about the disrespect being shown.

Mr. MCCOLLUM. We will take the unanimous-consent request after Mr. Bryant's time.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman.

Mr. Williams and Mr. Ballesteros, were you the two people at the door with the warrant serving it?

Mr. BALLESTEROS. Yes; there were several of us at the front of the compound.

Mr. BRYANT of Tennessee. OK. Now, I talked to Mr. Sarabyn the other day and asked him where the warrants were. We have been dealing with a search warrant and an arrest warrant, each of which could have been served separately. Are you saying today that one of the two of you had these pieces of paper, these warrants to execute?

Mr. BALLESTEROS. I didn't say that today.

Mr. BRYANT of Tennessee. Who had those?

Mr. BALLESTEROS. I don't know. I would imagine the case agent would.

Mr. BRYANT of Tennessee. Well, why were you all at the door if you didn't have the warrants to serve to whoever opened the door?

Mr. BALLESTEROS. We've run search warrants in the past; if there is a warrant signed, then we have legal access to the premises.

Mr. BRYANT of Tennessee. OK; and you—

Mr. BALLESTEROS. Regardless of who's carrying it physically.

Mr. BRYANT of Tennessee. This was not a no-knock search. You had no authority to kick the door down. It was not a no-knock search, was it?

Mr. BALLESTEROS. I don't know if there is a no-knock search, sir. We knock and announce every time we run a search warrant.

Mr. BRYANT of Tennessee. Well, the magistrate can order a no-knock search, but this was not one of those, so you had to knock first. Were you at the front door of the house?

Mr. BALLESTEROS. Yes, sir.

Mr. BRYANT of Tennessee. Ordinarily, if this were just a regular X, Y, Z case and you, Mr. Williams, went out to a regular house to serve a warrant, you'd have the warrants with you, would you not?

Mr. BALLESTEROS. We always do, sir.

Mr. BRYANT of Tennessee. OK. When you go up and knock on the door, the person comes to the door, you would serve him the warrant. Is that correct?

Mr. BALLESTEROS. That's correct, sir.

Mr. BRYANT of Tennessee. OK. So that day when you went up to Mr. Koresh's front door, who had the warrants to serve it on him when he answered the door?

Mr. BALLESTEROS. Someone behind us, sir.

Mr. BRYANT of Tennessee. What was your job? Why were you up there?

Mr. BALLESTEROS. To secure the premises.

Mr. BRYANT of Tennessee. In what sense?

Mr. BALLESTEROS. Once we knocked and announced we would make entry to secure all the inhabitants inside for their safety and for our own safety.

Mr. BRYANT of Tennessee. So if somebody opened the door—was this the plan—if somebody opened the door, you were supposed to force your way in the door and secure the area inside and then somebody would bring the warrant in later and serve it?

Mr. BALLESTEROS. As they open the door, sir, we identify ourselves, advise them we have a warrant, and we proceed inside.

Mr. BRYANT of Tennessee. OK. Do you know how far back the first, the lead truck, the lead cattle truck stopped? How far away from that front door was it parked?

Mr. BALLESTEROS. I couldn't tell you, sir.

Mr. BRYANT of Tennessee. Did you come up in it?

Mr. BALLESTEROS. I was in the second cattle trailer.

Mr. BRYANT of Tennessee. How far did you have to walk to the front door from the second cattle trailer?

Mr. BALLESTEROS. From the time I exited the trailer to the front door, possibly 50 to 60 feet.

Mr. BRYANT of Tennessee. Now, Mr. Buford, you testified dramatically the other day and I appreciate the service you have given to this country. But you testified a few minutes ago in relation to Vietnam and so forth that you never expected anything like this at Mount Carmel, that you had gotten to the door and—but wouldn't you expect under the circumstances that—I think you said that he—if he was going to shoot, he would have shot at the cattle trailers?

But if it was truly an ambush, which is what I think everybody has described from the beginning that you guys were ambushed, that he would let you walk in and lure you in much as they did in Vietnam. They let you walk right into the ambush, let you climb on the roofs before they started shooting.

Mr. BUFORD. Yes, sir, they definitely got us in their kill zone. The kill zone that they had set up at that time was the parking lot in front. They would have been at a tremendous disadvantage if they had let us get inside. They had it perfectly laid out so that we would be in front of the building right in the kill zone that they had determined.

Mr. BRYANT of Tennessee. OK. So it really is not a surprise to you now that they didn't shoot at you when you were coming up from the cattle trailers, but rather let you get out and come right down into their zone of fire?

Mr. BUFORD. No, sir, it surprised me that they didn't. Because had they opened up on us just as we got into the trailers, they actually, for a proper ambush, if it had been coordinated properly and they had known we were in those cattle trailers, they could have killed nearly everyone before we were able to get out of the trailers. Fortunately for us, the cattle trailers worked.

We used them to surprise in order to get up there without them knowing we were in them. I feel sincerely, I know this to be a fact, had we not been in those cattle trailers, we would have taken unbelievable casualties because he would have known it was us, they could have opened up with those .50-caliber weapons and the other weapons prior to our arrival and our casualties would have been tremendous and our 9-mm handguns would have done us no good.

Mr. BRYANT of Tennessee. Well, again not to argue, but I find it difficult to believe a man of Koresh's mentality at that time would have been fooled by the fact that there were two cattle trailers pulling up into his driveway and down his driveway. I am sure he was suspicious that something was going on.

Mr. BUFORD. Yes, sir, in fact, I believe one of the Davidians that came out testified to the fact that he wasn't sure that it was us and that's the reason he went outside to run these farmers off that had pulled into his driveway. I believe that is testimony from someone inside the compound.

Mr. BRYANT of Tennessee. Mr. Merletti, you are from the Secret Service. You were part of the nonbiased folks from the outside who prepared this report. There's still a great deal of finger pointing going on as I have seen during the time I have been here this morning as to whether or not this surprise, the secrecy had leaked out and whether who knew what, when. You gave testimony ear-



lier, though, that you had interviewed some 61 field agents, some of the people in the staging areas.

Mr. MERLETTI. Yes, sir.

Mr. BRYANT of Tennessee. Is there any doubt in your mind that the word was out that, like Mr. Rodriguez said, Mr. Koresh knew about this and these folks were going into a situation where the Koresh people had 45 minutes to get ready for them?

Mr. MERLETTI. Absolutely, the element of surprise was lost and ATF management knew that. As a matter of fact I personally interviewed—

Mr. BRYANT of Tennessee. Who is management that you're talking about?

Mr. MERLETTI. I—

Mr. BRYANT of Tennessee. Who's the management?

Mr. MERLETTI. I personally interviewed Mr. Sarabyn in—I believe it was late June, and when we got to the point of discussing what he said at the staging area, which he—what he said was, repeated over and over, hurry up, Koresh knows we're coming. When I asked him about that point, he initially said to me, I didn't say that.

I pulled out the paper that I had showing we've interviewed 61 people that said they heard you say that. How can you deny saying that?

He then gave a story something about well, I was trying to quote Robert Rodriguez. The story was very evasive.

I then told Mr. Sarabyn that we were going to break for lunch and that I would be back in about 1½ hours. There were two people conducting the interviews, myself and another agent named Fred Clare.

We returned about 1½ hours later and we walked into the room and Mr. Sarabyn was sitting at the table. I'll never forget as I was taking off my coat and hanging it up, he said to me, what did you bet?

I said what do you mean?

I thought he meant did I go out during lunch and buy a lotto ticket.

He said again what did you bet?

I said I don't know what you're talking about.

He said I'm sure you all made a bet on what I was going to tell you when you came back.

I said we made no bet. As we were sitting down, Mr. Sarabyn spontaneously said, I knew Koresh knew we were coming. Mr. Clare asked him on a scale, a percentage scale from 0 to 100 how sure were you that you knew Koresh knew you were coming?

He said, I was 100 percent sure. We then went to main Treasury with Mr. Sarabyn at which time he repeated this story in front of the project director, Mr. Moulton. He then told us, I feel that I need to call Phil Chojnacki this evening to tell him that in fact I have told you what I told you today.

The next morning we met again to continue the interview. At the beginning of the interview, Mr. Sarabyn said, I want to make a few points. No. 1, I want to change the statements I made yesterday as to my knowledge of Koresh knowing we're coming. We asked

what—what are you doing? And again an evasive story. We asked who did you talk to last night? He said Phil Chojnacki.

Mr. McCOLLUM. Thank you, Mr. Bryant. Your time has expired. With Mrs. Thurman still reserving her time, I yield to Mr. Blute.

Mr. BLUTE. Thank you very much, Mr. Chairman.

I would like to thank all the witnesses for their testimony. This is—these are difficult issues and I hope you will bear with the committee as we ask some tough questions here.

I want to get back to the question of intelligence and the undercover operation because I think this is very important. I think that some of the problems associated with the undercover operation and the intelligence clearly led to this tragedy for the ATF and those agents and their families, and I wanted to ask some very basic questions, Mr. Rodriguez, if I could, about the undercover operation.

Did you use a different name when you interacted with the Davidians?

Mr. RODRIGUEZ. Yes, sir.

Mr. BLUTE. What was that name?

Mr. RODRIGUEZ. Robert Garcia, not Gonzalez.

Mr. BLUTE. Not Gonzalez as it had initially been.

How did you approach the Davidians and gain their confidence?

Mr. RODRIGUEZ. You want a long story or short story?

Mr. BLUTE. Short.

Mr. RODRIGUEZ. We decided to—made a plan to walk in and ask them if they wanted to sell a horse walker they had in front of the yard. And since we had been pressured to go in and infiltrate, we worked out that scheme, and an agent, Mr. Wade Brown and I, walked up to the compound or drove up to the compound. When we got there, we were immediately surrounded by numerous, numerous men. We asked for—we just asked if they wanted to sell the horse walker. That was the first time I met David Koresh.

Mr. BLUTE. Well, we've heard a lot of testimony, some from the Davidians, Mr. Thibodeau specifically, who seem to indicate that the cover was compromised from the very beginning. Did you sense that you were marked by Koresh as some type of police agent?

Mr. RODRIGUEZ. I'm sure that he was trying real hard to find out who we were. We did have a lot of problems when we first started the undercover operation.

Mr. BLUTE. Let me ask about that. Did you feel comfortable with the ruse, the cover that you were college students attending a local technical school?

Mr. RODRIGUEZ. Well, first of all, you got to understand that I came from—from McAllen to join this group. By the time I arrived, all preparations had already been made and all rules and everything was already set.

When we first got—when I first got to Waco, and first saw the compound, and we saw how the operation was running, all of us knew, or myself knew that we're going to have problems. It was just too—too obvious.

Mr. BLUTE. Too obvious; did you report these to your superiors, that's feelings that you had that the intelligence operation was not up to—

Mr. RODRIGUEZ. I did advise case agent Davey Aguilera of the situation.

Mr. BLUTE. Let me ask you a couple more questions that have been brought up and I want to get your reaction to it with regard to the undercover operation. There have been reports that women who were not ATF employees were brought in to the undercover house on at least one occasion.

Mr. RODRIGUEZ. What we did, we wanted to—we were trying to look as much like students that as could. First of all, we were not students at Baylor University.

Mr. BLUTE. Right, a local technical school.

Mr. RODRIGUEZ. The average age there may be 19 or 20. We were supposedly students at TSTC, which is all ages.

Mr. BLUTE. Although Mr. Thibodeau testified that he asked one of the agents the question of what his major was, and the response was philosophy.

Mr. RODRIGUEZ. I believe he claimed that he asked me what it was, and I said philosophy, which was false. I think I advised Koresh that my major was photography.

Mr. BLUTE. OK. What about alcohol use at the undercover house, was that part of the ruse or was that—

Mr. RODRIGUEZ. No, sir, at that particular time we wanted to look as normal as possible, look like agents—not agents, excuse me, like students. And we invited some of our women agents and pretended to throw a party, just trying to be as normal as possible. That's what that party was.

Mr. BLUTE. I appreciate that.

I'd like to ask Mr. Sarabyn and Mr. Chojnacki about what you were feeling about the undercover agents and their saying that they felt somewhat uncomfortable with the security of this undercover operation. Did you feel like you should have changed that or done something to protect the agents?

Mr. SARABYN. We had the agents in there, rotating at a different time. And then we had a supervising agent that was supposed to take care of their needs or whatever, as far as anything that would come up.

Mr. BLUTE. But did you fear that perhaps they were already marked by Koresh as agents?

Mr. SARABYN. No; there was a next-door neighbor that was kind of like an unwitting informant. He would go into the compound and come back and he would talk to the neighbors. So we'd get information from him that we knew was, you know, reliable because he didn't know who they were. So he'd come back and say—and a couple times he said Koresh was nervous or thought something was there, but then he felt more comfortable after that.

Mr. BLUTE. Why was the 24-hour surveillance discontinued?

Mr. SARABYN. I met with all the undercover agents on a meeting and they said, you know, it was hard to keep up with their going to college and running those shifts. And they said there was no activity basically going on during the night. They had watched it for 2 weeks, so they asked if they could knock it down to basically 6 in the morning to midnight. And I OK'd it.

Mr. BLUTE. Let me ask you one question about the pit. The pit was where the Branch Davidian males were supposed to be work-

ing in large numbers. And logs kept there indicated that only about 14 of them were working there, leaving a large number of other men in the building. And this was key in the planning of the raid, wasn't it?

Mr. SARABYN. We estimated that there was 10 or 15 people. But the pit significance kind of changed as we went along. When we first started the investigation, the pit was actually a large hole. By the time we actually executed the warrant, it was a basement. The key significance was that after they had Bible study, in our opinion, like at 10, they would go work on something.

Mr. BLUTE. That's why you delayed the raid until 10, rather than early in the morning?

Mr. SARABYN. Because they would be working somewhere. At one time we could see them actually working in the pit, then underground, but they always went and did something.

Mr. BLUTE. But you didn't expect that they'd all be there or a large number of them would be there?

Mr. SARABYN. I felt that a number of them would be somewhere at that time.

Mr. MCCOLLUM. Mr. Blute, your time is expired.

Mr. BLUTE. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Mr. Schiff, with Mrs. Thurman still reserving, you're recognized for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. Altman, I'd just like to go back over, please, the memorandum that you sent to Secretary of the Treasury Bentsen. You were at the time the No. 2 person at the Treasury Department; is that right?

Mr. ALTMAN. Yes, sir.

Mr. SCHIFF. Your memo, which has already been discussed here, contains the words as you're describing on April 15, the planned FBI plan to terminate the siege, which came about on April 19, you said the risks of a tragedy are there, among other things. Am I reading correctly?

Mr. ALTMAN. Yes, sir.

Mr. SCHIFF. Did you receive any response from Secretary Bentsen about your memorandum from the point you sent this on April 15 to when the FBI actually acted on this plan?

Mr. ALTMAN. I don't recall whether we discussed it. I spent a great deal of time each day with Secretary Bentsen and I really don't remember whether we discussed this after April 15 or we didn't.

Mr. SCHIFF. Excuse me for pressing a little bit here, but this is rather strong language. The risks of a tragedy are there. You're saying you do not remember if you and Secretary Bentsen discussed it further?

Mr. ALTMAN. No. I was reflecting an instinct. I know nothing of the technical issues, of the assault-related issues, the gas. My reaction was just an instinctive one.

Mr. SCHIFF. But you felt it strongly enough to send a memorandum to your boss, the Secretary of the Treasury?

Mr. ALTMAN. Yes, but I sent such memorandums very regularly on all sorts of matters.

Mr. SCHIFF. Did it occur to you—well, Secretary Bentsen has already testified earlier, as I think you know, that he considered this matter no longer the Department of the Treasury's responsibility, because it had been turned over to the Justice Department. And, of course, it had been turned over to the Justice Department. But for that reason, did you ever send this memorandum with your concerns to the Justice Department?

Mr. ALTMAN. No, sir, of course not.

Mr. SCHIFF. Why of course not?

Mr. ALTMAN. Because this was a—as the memorandum itself says, this is the Attorney General's decision, and I can't remember any circumstances where I would send a memorandum to the Justice Department.

Mr. SCHIFF. Well, I understand this was the Attorney General's decision, because the Justice Department had taken over this situation. But it began with the Treasury Department through the Bureau of Alcohol, Tobacco and Firearms. Wouldn't in your opinion, then, the opinion and views of people in the Treasury Department be of value to the Attorney General before she made the decision go ahead with this move, this attack?

Mr. ALTMAN. Not mine.

Mr. SCHIFF. Not yours?

Mr. ALTMAN. No, I had no background whatsoever in these issues.

Mr. SCHIFF. So you're saying your memorandum wasn't worth anything?

Mr. ALTMAN. I said I wouldn't have proffered those views to the Justice Department, because I don't think I was qualified to make any judgments.

Mr. SCHIFF. But you were qualified enough to send them to your boss, the Secretary of the Treasury?

Mr. ALTMAN. Yes, but that's the type of relationship we had.

Mr. SCHIFF. Well, I'm just going to let it go at that, Mr. Altman.

Mr. Chairman, I'm going to take a moment here and just address something I saw this morning. I want to say that I'm very grateful that these hearings are being carried in their entirety by several networks, because I have to say with regret, I think a number of people getting their information from news stories, not in all cases, but in many cases, are not getting all of the information.

In today's—in a national newspaper, I won't mention its name, but its first three initials are U.S.A., they do a summary of the 3 days of testimony. They start off with a—with the rendition of the sexual abuse, the despicable practices of David Koresh on Kiri Jewell. And it's complete with Ms. Jewell's picture. And in case you miss it, they put Ms. Jewell's picture in again in letters to the editor section.

Then after doing that, they say: Other witnesses testified about the now controversial use of the military in training agents for the raid. Well, with respect to that section, that's a little like saying, other than that, Mrs. Lincoln, how did you like the play?

What was going on was that the military was being misrepresented to, to get them to provide training they would not have provided under military policy. Because there was this mindset, there

was this mindset that ATF was going to conduct a military And nothing was going to dissuade them.

And speaking of concern for children, I think it's terrible, a terrible tragedy what happened to Kiri Jewell in that compound that she testified to. But speaking of children, the child caseworker from the State of Texas, Joyce Sparks, testified before us that in her opinion the plan for a raid was a fatal mistake. Her words were. When I saw those ladders going up on television, I knew children were going to die.

And my concern, Mr. Chairman, is that unless people have had the opportunity to see all of these hearings, they're not getting a lot of that information; that the tragic abuse which occurred to Kiri Jewell was inserted in this hearing to do to the headlines and to the media-reporting exactly what it's done. I say that not because child sexual abuse isn't important. Of course it is. I used to prosecute such perpetrators, many years.

But the Bureau of Alcohol, Tobacco and Firearms, it should again be emphasized, was making a raid to search for weapons violations and to conduct an arrest for weapons violations. If they were concerned for children, they would have listened to the caseworker who was working with those children, who warned them that this was an error.

With that, Mr. Chairman, I yield back to you, Mr. McCollum, any time that I may have remaining.

Mr. MCCOLLUM. Well, I thank the gentleman for yielding.

We're approaching the point in time where we want to take a lunch break, we're getting quite late into that.

Mrs. Thurman and I are the only remaining panelists presently up here who have not questioned this panel. We do not want to have a second round of questions completely through this because of the time involved, if we can avoid it. There are quite a substantial number of very significant questions that only the ATF and some of who are here today can answer that really should be brought out.

I think the public needs to have us ask these questions so you can respond to them, and they've not yet been asked today. With that in mind and having consulted with Mrs. Thurman, Mr. Zeliff, and Mr. Schumer, I'm going to ask unanimous consent that after lunch the first round of questions, say, be closed except as to the 5 minutes remaining of Mrs. Thurman's and my time, and that each side, Democrat and Republican, can get an additional 15 minutes allocated to question this particular panel after we return from lunch, to be controlled by the chairman and by Mrs. Thurman.

Is there any objection?

Mr. CONYERS. Reserving the right to object, Mr. Chairman.

Mr. MCCOLLUM. Yes, Mr. Conyers.

Mr. CONYERS. I had understood that it was going to be 10 minutes.

Mr. MCCOLLUM. It was, but we just altered it to accommodate a particular problem in getting the questions in we need to get in, and you're getting the advantage of that.

Mr. CONYERS. Well, that's so kind of you. I really wanted a lot more time than that, and you cut it down to 15 minutes.

The problem is, that each time we decide to go additional time, guess what that's doing to the length of these hearings? Each day and each week.

Mr. MCCOLLUM. Well, the gentleman will yield back to me.

I would just comment that the other option is for us to take a complete second round of questions for this panel. This is such a large panel and so critical and there are so many questions of the raid itself and how it was planned——

Mr. CONYERS. Well, thank you.

Mr. MCCOLLUM. I'm tempted to actually shorten the amount of time involved, because we believe having discussed it among ourselves that we can accomplish that in the time——

Mr. CONYERS. Well, that's what I was trying to do, I was trying to shorten it.

Mr. MCCOLLUM. I understand.

Mr. CONYERS. I'm in quite agreement with you. But I mean if we try to go another round——

Mr. MCCOLLUM. We're not going to do that.

If my unanimous consent is granted right now, then we will only have, except for Mrs. Thurman and myself——

Mr. CONYERS. I will withdraw my objection.

Mr. MCCOLLUM. Thank you.

Without objection, it is so ordered.

We are now going to take a lunch recess until 5 minutes after 2. That will be 45 minutes.

I hope that the panel down here can get lunch as well with us during that time.

The subcommittees are in recess.

[Whereupon, at 1:19 p.m., the subcommittees recessed to reconvene at 2:05 p.m., the same day.]

#### AFTERNOON SESSION

Mr. MCCOLLUM. The joint subcommittees on the Waco matter will reconvene.

The hearing is reconvened, if we could get some order in the House, as they say, or order in the committee meeting room.

We're back aboard at this point. When we recessed a few minutes ago, we recessed for lunch under an understanding that Mrs. Thurman and I each had 5 minutes on the first round, the only real round of questions we had for this panel. We had quite a number of other important questions to ask that we hadn't gotten to, therefore, we had gotten by unanimous consent permission for each of us to control, in addition to those 5 minutes, 15 minutes each on our side to conclude the questions of this panel.

With that in mind, then I'm going to yield myself such time of my time as I may consume, and I'm going to ask the first questions I have to Mr. Altman who has a plane to catch. I'm going to Mr. Zeliff for an Altman question as well, and anybody on your side, Mrs. Thurman, who wants to, so we can let him go. He has been very good to be down here on an extra day.

Mr. Altman, I understand from testimony last week that you did not know at any time anything about this raid on February 28 its planning or the fact that it was going to happen. We need for you to say for the record whether you did or not.

Mr. ALTMAN. Well, that's largely true, Mr. Chairman. But on the Friday evening before the Sunday raid, I was called—I think I had left the office already, but I was called by my then special assistant, who told me simply that there would be a major ATF activity over the weekend, that it might generate some press, and that if I saw the press not to be surprised. I wasn't asked for my approval, I wasn't told Waco or Branch Davidians or anything to that effect. I was told only what I just told you.

Mr. MCCOLLUM. Did you not inquire and learn anymore at that point?

Mr. ALTMAN. I didn't.

Mr. MCCOLLUM. When did you first learn of this raid?

Mr. ALTMAN. Apart from what I just related?

Mr. MCCOLLUM. Yes.

Mr. ALTMAN. I learned on Sunday morning, sometime around 11, I think it was, but I am not certain, when Ron Noble called me at home in New York, and informed me what had happened.

Mr. MCCOLLUM. Mr. Altman, before the raid on February 25, Mr. Higgins, the Director of ATF testified that he had not met you, had not even personally shaken hands with you. Could you tell us if that comports with your recollection?

Did you at any time prior to February 28, 1993, have a meeting or meet with Mr. Higgins?

Mr. ALTMAN. Well, I had a practice of having biweekly meetings of all the Bureau heads, which includes ATF, and the first one of those meetings would have occurred before the raid, because we had been in office a few weeks. I don't recall whether Mr. Higgins attended it, perhaps he didn't. And I wouldn't, in any event, have had any one-on-one discussions with him. Those were meetings where one typically went around the room and asked for highlights of activities or planned activities.

Mr. MCCOLLUM. In any event, you don't recall specifically whether Mr. Higgins was in attendance at the meeting or not, if there was one, and you do not recall any specific discussions you had with Mr. Higgins before February 28, or actually meeting him personally?

Mr. ALTMAN. No, sir, I don't.

Mr. MCCOLLUM. Thank you.

Mr. Zelif, I'm going to yield to you so we can have you ask Mr. Altman any questions you have.

Mr. ZELIFF. Mr. Altman, I've read your letter over and over and over again this past weekend, and I want to congratulate you for your gut, as you described it, your gut instinct that something really bad was going to happen after your briefing, and that you felt that your boss, Mr. Bentsen, should be notified. And it just seems to me that we're in Government here, you know, we know of things that are going to happen, somebody has to step up and be responsible, and you did do that.

I guess my concern would be, is once you did this on April 15, did you follow up in between the 15th and the 19th in talking with Secretary Bentsen? You probably talked to him about 10, 15, 20 other different things. Was this one of the things on the to-do list that you might have said, well, did you get my letter?



Mr. ALTMAN. Well, Mr. Zeliff, as I said earlier, I don't remember whether I actually had any oral discussion with Secretary Bentsen on this or whether I didn't, because we did have such a large amount of business between us. But I did not seek to press the point. Mostly because I felt completely unqualified to make that judgment.

It was my instinct and I reflected it to Secretary Bentsen, because that was the type of relationship I had with him, but I didn't have any basis from which to push the point. You'll note that in that letter I said that it was also my hunch that if the FBI simply waited out Mr. Koresh, then probably he would concede. And having listened to some testimony this morning from Mr. Rodriguez, he's pretty persuasive to the effect that that particular hunch would have been wrong.

Mr. ZELIFF. I guess my concern is, if I was just walking to the market and I saw somebody setting a fire, I'd probably see that the proper authorities were notified and I'd probably stick around and make sure that I'd done everything I can possibly do. But again, I congratulate you for having the instincts that you knew something bad was going to happen, you at least put it on a piece of paper and sent it in.

Mr. ALTMAN. Thank you.

Mr. ZELIFF. I have one question for Ms. Wheeler.

You were the publicity person for ATF, you testified that you made informal—or informational telephone calls to radio and TV stations. I guess my question is, and maybe you can help me, you were brought down there to do publicity or your job was to do publicity, and the word that we heard somewhere along the line is the nickname or the code name of this operation was Showtime.

Could you add something to that? And did that have anything to do with your arranging publicity or having the TV stations available or—

Ms. WHEELER. Absolutely not, sir.

First of all, I contacted no radio stations. Second of all, Showtime was strictly a word that was going to be used when—to alert everyone that the agents had stepped off the trucks. It was not the name of the operation, it never was the name of the operation. Showtime was strictly a word used so that—it was a word used that people don't use in regular conversation on a daily basis. They said if they chose that word, when Showtime was said, that meant that everybody knew that the agents had stepped off the truck. That was all Showtime meant.

Mr. ZELIFF. Well, I'll turn my time back to the chairman, but it just seems to me that it's a poor use of words in terms of Showtime, in terms of calling those TV stations, in terms of staging a publicity event that was about to happen, to be successful, but unfortunately was not successful. I just think the word Showtime ended up getting echoed, probably would be a bad choice of words to use.

Mr. MCCOLLUM. Reserving the balance of my time, I want to yield to Mrs. Thurman.

I understand there may be a question to Mr. Altman on your side, and if there is we need to get that out so he can leave.

Mrs. THURMAN. And I will at this time yield 1 minute to Mr. Scott from Virginia.

Mr. SCOTT. Thank you, I thank the lady from Florida.

Just a couple of questions, Mr. Altman.

To put the Waco situation in context, when was the New York City World Trade Center bombing in relationship to these events?

Mr. ALTMAN. I believe it was the Friday before the initial ATF raid on that Sunday.

Mr. SCOTT. And were you involved, was the Treasury Department involved in that investigation?

Mr. ALTMAN. Well, the Treasury Department was immediately involved, although I wasn't particularly so personally, immediately involved.

Mr. SCOTT. OK.

Let me ask another question, I'm trying to get this in. Where was Secretary Bentsen during this time?

Mr. ALTMAN. Secretary Bentsen was in London attending a G-7 finance minister's meeting.

Mr. SCOTT. Were you involved in that?

Mr. ALTMAN. No, I was home minding the store, so to speak.

Mr. SCOTT. So you had the World Trade Center, you had the international monetary situation, and after April 15, what was Treasury's role—Treasury's role at Waco?

Mr. ALTMAN. After April 15?

Mr. SCOTT. Right, this memo that they keep waving around is April 15. On and after April 15, what was Treasury's role?

Mr. ALTMAN. Treasury's role was largely limited, I believe, to preparations to conduct the investigation about the original February raid.

Mr. SCOTT. But nothing after—nothing at Waco, you had been taken out of the situation?

Mr. ALTMAN. The FBI was responsible. I don't actually recall whether any ATF personnel remained there, but the FBI was responsible.

Mr. SCOTT. Thank you, Mr. Chairman.

I yield back.

Mrs. THURMAN. Thank you.

Mr. Sarabyn, when you testified before this committee a couple of days ago, you had talked about a multitude of questions that you had asked Mr. Rodriguez. Could you again tell us what those questions were?

Mr. SARABYN. OK.

As I said, you know, the whole event was a traumatic event. During this time, my conversation with Robert, I took notes. The reason I took notes, is earlier that morning I had met with all the SRT team leaders and they had three or four specific questions.

Mrs. THURMAN. Was that a part of the plan as you all were developing the plan?

Mr. SARABYN. To?

Mrs. THURMAN. If, in fact, somebody came out, to let you know what was going on in there, was that part of the plan?

Mr. SARABYN. Yes, that was part.

Mrs. THURMAN. Who helped you develop that part of the plan?

Mr. SARABYN. As far as that he would go in that day? I think it was just a consensus. Like I say, when we developed this plan, there was not one person. There was 15 people that participated. We just talked things out and came to the conclusion that he'd have to go in that day and give us a report after.

When—you know, like I said, when he reported to me, the words that he spoke this morning, he said, Chuck, they know, and I asked him again, what do you mean. You know, they know. Then he went through, I got a telephone call, he went in the other room, he came back and said ATF and the guard are coming. I go, what do you mean, what's he doing?

He repeated that again, that he got a telephone call, came back, and said ATF. So I am thinking, what's—what's going on? You know, so I ask him, trying to determine if Koresh was doing something or was he just saying this as he had said before. So I said is he telling anybody to do anything? He said, no; he's not telling anybody to do anything.

So then I said, you know, are there any guns out? He said there aren't any guns out. So I went through a series of questions, and then I went back to the team leaders which repeated a lot of the questions. But I just determined, I don't think there is a disagreement on the words that Robert has said to me, it's just the interpretation of what those meant to me versus what they meant to him.

Mrs. THURMAN. Mr. Rodriguez, let me ask you some questions then. Since—how long had you been talking with Mr. Koresh?

Mr. RODRIGUEZ. I entered the compound approximately eight times. First time was on January 28, then on the 17th, the 18th and 19th, the 21st, the 26th—I'm sorry, 27th and 28th.

Mrs. THURMAN. At any of these times, did you all—did you ever go back to Mr. Sarabyn and talk to him about your conversations with Mr. Koresh? I mean, was there any reason to believe that he should understand the personality changes here?

Mr. RODRIGUEZ. Ma'am, that was one of the problems that I admit that we had in our undercover operation. We didn't have—we had obtained a lot of information, or I had, but the communication was just not there. The only time that I did communicate was with Mr. Chojnacki, was on a Saturday, when he had—I had been in the compound that Saturday, which was the 27th.

And I was in there, supposed to find out what the reaction was to the first issue of the "Sinful Messiah." When I came out, myself and another agent met with Mr. Chojnacki, and I advised him there's so much that I need to tell you. To keep from rambling, what is it that you want to know that would prevent this raid from being stopped?

He said, Robert, he said if there is a guard in front of the gate with a rifle, that's no problem, we'll take him down. If you see somebody with a gun inside, that's OK. We come upon that all the time doing our work. But if you see somebody with a rifle on the tower, then we'll call it off and do it some other time. At that point, I knew that that's—those were the main issues regarding—

Mrs. THURMAN. Did we see anybody on the tower with a rifle?

Mr. RODRIGUEZ. No; at that particular time there was—I saw no firearms, I saw nobody preparing themselves. One thing that when

I left, Koresh was not reading the Bible. I do not know where Mr. Sarabyn picked that up. Everything was—as I left it, people were there standing in the main area when I left. That's the way it was.

Mr. SARABYN. Mrs. Thurman, can I respond for one question?

Mrs. THURMAN. You'll have to ask the chairman.

Mr. ZELIFF. Yes, you may respond if it's a followup to her question.

Mr. SARABYN. One question that you asked as far as the planning and the coordination between the undercover and the planners. The first day we went to Fort Hood, all the planners reported there, before all the agents came in, the SRT team, and this was this committee of 15 to 20. When we brought Robert up, which he briefed all the team leaders, we went over the plan, they asked him questions, and in fact on his information several teams modified their plan that day. Bill Buford's New Orleans team had asked him about some stairs and a couple of other things.

So, you know, we had as long as we wanted, anyone could ask him questions or whatever, what he thought, how we should do it? And we made changes as a result of that input on the first day at Fort Hood.

Mrs. THURMAN. And I would yield back then.

Mr. MCCOLLUM. Thank you, Mrs. Thurman.

Mr. TAYLOR. Mrs. Thurman, if the gentlelady would yield?

Mrs. THURMAN. I'm going to have about 7½ more minutes, and then I would yield to you, Mr. Taylor, and to Mr. Brewster.

Mr. MCCOLLUM. We've each used 5 minutes of the time, so there's 15 minutes to a side left at this point. I'm going to yield myself such time as I may consume of that remaining time. I want to run, first of all, over to Mr. Rodriguez a second to follow up on a couple of quick questions.

At any time when you were in the Mount Carmel compound, did you observe any evidence of an active methamphetamine lab or other evidence that would suggest drugs existed at the Branch Davidian compound?

Mr. RODRIGUEZ. No, sir, I didn't.

Mr. MCCOLLUM. Mr. Rodriguez, is it true, as some have asserted in some of the reading I've had, that the plan that David Koresh had worked out with you was an arrangement that you would move into the compound about March 1 if that raid had not occurred February 28?

Mr. RODRIGUEZ. That's correct.

Mr. MCCOLLUM. That was not something that you ever planned to carry out, I gather.

Mr. RODRIGUEZ. No, sir, I did not.

Mr. MCCOLLUM. No one had ever talked to you about going ahead and doing that. Suppose the date of the raid had been later, would you have done it?

Mr. RODRIGUEZ. What I had told them is be sure the raid's on the first, because I am not going back.

Mr. MCCOLLUM. OK, fair enough.

I've got a question for you with regard to Bible studies and so forth, the religion. There's some evidence that has been presented to us that you had not particularly had a strong background before you took this undercover task in the Bible or in the Book of Revela-

tion, that you got most of your information, on-the-job, so to speak. Is that correct?

Mr. RODRIGUEZ. I'll tell you how I did that, sir. Prior to the undercover operation, I was thinking that in the case that I did go in—see, Mr. Aguilera had told me all the information he had on what they believed in. And I did not want to go unprepared, just in case it happened that I went inside the compound. So what I did, prior to my entry in the compound, I called my Catholic priest and asked him what is the Book of Revelation and the Book of Seven Seals. And he—and he explained to me very, very shortly, I mean—

Mr. MCCOLLUM. I understand.

Mr. RODRIGUEZ [continuing]. What it was.

Mr. MCCOLLUM. That's fine. I want to just get that on the record.

Mr. RODRIGUEZ. That's the only part—

Mr. MCCOLLUM. That's the background before then. That's all I wanted to get.

Mr. Ballesteros, I want to ask you one quick question. There have been some writings out there that have said something contrary to what I think you said earlier today, and that was supposedly that you made a couple of statements to the Texas Rangers that the ATF shot first and did not announce. Now, that's not what you said today, but those statements have been made in private; am I correct that you are denouncing these statements as not true?

Mr. BALLESTEROS. The statement that I made that was in print was that I had assumed that the gunfire that I heard was coming from our dog team. In trial I testified that that was not the case. Certainly could not have been the case because as we exited the trailers I heard gunfire.

I was running with the dog team. I didn't see any dogs, we didn't see any dogs, and like I said before, the gunfire had already been coming from the compound. So that was obviously a poor assumption on my part, because clearly, the fact is, the facts are, that gunfire emanated from the compound.

Mr. MCCOLLUM. Mr. Chojnacki, a couple of quick questions to you. Why was the film never developed that we understood, was taken in the undercover house, and why were not the videos reviewed before the raid?

Mr. CHOJNACKI. The only way I can answer that is to say I didn't know the film hadn't been developed. We had people assigned to accept the raw film and ensure that it was immediately processed so it could be reviewed. When the—primarily so the planners would have access to it when they were working on the plan.

I was not aware of those facts until after the investigation when we found out there was film undeveloped. Mr. Merletti also commented on Chuck Sarabyn's conversation with him in that we had had a phone call during the course of the Treasury review. Chuck called me that evening and advised me that he was in the middle of the review, and that they were putting an awful lot of pressure on him to come up with a story that supported the position that I knew the raid had already been compromised.

Chuck said they had told him that his family name would be soiled in America, that his wife and children would be embarrassed to be called Sarabyn. Chuck said I just felt so bad about that, I told

them, tell me whatever the truth is that you want to hear, and I'll say it. I said, Chuck, you have to do whatever you want to do, that's your statement, but just tell me one thing. Is it the truth? He said, no, it isn't. I said thank you. Then he went back and retracted that statement.

Mr. MCCOLLUM. Mr. Chojnacki, is it true what we heard Mr. Higgins say last week that a decision was made on or about February 12 at a meeting I gather that you, maybe Mr. Hartnett, and Mr. Sarabyn were participants in. I'm not positive of who was there. Was the meeting about the decision not to go forward with the idea of arresting Mr. Koresh outside of the compound, but rather to concentrate strictly on going in and having the search and the dynamic entry? That's what the Director indicated to us Friday.

Is that unfamiliar to you? You're looking a little puzzled.

Mr. CHOJNACKI. I'm sorry, I am a little bit puzzled. When we went to headquarters with our planning, the plan that we brought forward was the plan for the dynamic entry. We had discussed those other options. Now, it's certainly possible that during the course of the conversation with Mr. Higgins that we pointed out the other options that we had decided against, and I believe he possibly certified our position, don't do those things, I do agree with the dynamic entry plan.

Mr. MCCOLLUM. Well, essentially at some point, a week or 10 days or 2 weeks out from the raid, you made the decision not to attempt to arrest Koresh even if he had come out of the compound, is that correct?

Mr. WILLIAMS. We felt at that time that if we arrested him outside the compound, we still had to bear the brunt of attempting to execute the search warrant inside that location, because that's where the evidence was.

Mr. MCCOLLUM. I understand the reasoning. I just want to know the fact, that you had made that decision a week, 10 days, or 2 weeks, sometime in that timeframe before the raid. You had decided to discard the option of arresting him outside the compound, even if you had seen him outside the compound.

Mr. CHOJNACKI. I would have to say we probably did. We didn't expect to see him. He said he wasn't coming out.

Mr. MCCOLLUM. I know that. If you had seen him, you'd already made up your mind you weren't going to do that, is what I'm getting at.

Mr. CHOJNACKI. That's correct. We had no way to do that at this time.

Mr. MCCOLLUM. All right. My question for you as well is why didn't you listen to Joyce Sparks who advised us that she told you her opinion that you should not go forward with this raid and that if you captured Koresh outside the compound, it would have cut the head off, so to speak. She also told us that under their religious tenets, the way that he was making himself out as a messiah, they would never have killed themselves because they all had to die together. That's what she said Friday. Did she discuss that with you, those two points? Did she object to it and why would you choose not to listen to her at that point?

Mr. CHOJNACKI. I've never met Ms. Sparks prior to going to Waco for that raid, so we never had that kind of conversation. She may

have had it with ATF people, I can't deny that, but up until the time I went to establish the command post, I—I may not have met her even there. I don't know.

Mr. MCCOLLUM. Mr. Sarabyn, do you know of anybody who talked to Ms. Sparks about this, to whom she spoke?

Mr. SARABYN. I think most of her conversations were with Davey Aguilera. And, you know—

Mr. MCCOLLUM. But she didn't say it to you?

Mr. SARABYN. No.

Mr. MCCOLLUM. All right. Were there no telephones carried out at the raid site, Mr. Chojnacki? In other words, we had a report that Mr. Lynch, the deputy who got the 911 call from Wayne Martin after the raid began, could not get through to anybody at the raid party for 20 minutes because there were no portable telephones which allowed for him to do that.

Mr. CHOJNACKI. My understanding of that situation is that we in the command post had the phones tied up. We presumed that the sheriff's department was maintaining constant radio contact with their headquarters. They had a radio setup in our command post. The radio was on and they were monitoring transmissions back and forth. I don't know whether that radio was on or not on at that particular point in time.

Mr. MCCOLLUM. Well, you did have radios with you but you didn't have telephones?

Mr. CHOJNACKI. In the command post we had both radios and telephones.

Mr. MCCOLLUM. All right. Why wasn't a no-knock search warrant sought?

Mr. CHOJNACKI. Normally, no-knock search warrants are for those kinds of situations that relate primarily to narcotics, where the evidence can be immediately destroyed. In our situation, it could be destroyed, but not in an immediate time frame.

Mr. MCCOLLUM. Did agents Daryl Broward and William Crohn set out to draft a raid plan that was never formally drafted. Is it true that the physical rough draft was in Crohn's desk at the time of the raid?

Mr. CHOJNACKI. The plan—the documents that those two men were attempting to prepare was an administrative plan for the conduct of a national regional response. It was not the raid plan. There are two distinctly different documents.

The raid plan is a tactical document prepared by the leader of the raid. Normally, the leader of your SRT, if you're having an SRT call out. In this case, they were all in Fort Hood fine-tuning what their teams were going to do and where they had written plans, but it was handwritten.

Those handwritten documents were to be collated into one formal under an ATF raid plan form document when they came to the command post on that Sunday, the 28th. When we were executing the warrant on the March 1, when we bumped the plan up, they never came to the command post.

Mr. MCCOLLUM. All right, I just wanted to find out about it.

Last question, Ms. Wheeler, isn't it true that there was a film crew on site at the time of the raid, hired by the ATF, not related to any of the outside media? Didn't they film this?

Ms. WHEELER. The National Guard came in and I was not involved with that. That was tactical.

Mr. MCCOLLUM. OK, all right.

I'll reserve the balance of the time. Mrs. Thurman.

Mrs. THURMAN. At this point I would yield 2 minutes to Mr. Taylor.

Mr. TAYLOR. I thank the gentlewoman.

Mr. Rodriguez, some people who have been openly hostile to the law enforcement community in these hearings and in statements prior to these hearings have said repeatedly that if they just waited a little longer, that Koresh had gotten word of the raid, they just waited a little longer, everything would have been just fine. David Koresh being a nice, rational guy would have just walked out.

How does that contrast with the statement that he made to you on the day of the raid, that neither the ATF nor the National Guard will ever get me, they got me once and they'll never get me again?

Is it your opinion that David Koresh would have voluntarily walked out at some other time, had those words that you heard gotten to these gentlemen and they delayed the raid?

Mr. RODRIGUEZ. David had already gone to the court system once. You have to understand that he did not believe in the court system. He did not believe in the Government and its policies.

The only thing that he believed in was the Bible. Therefore, he would not have come out and say, well, here I am, take me, and we'll see what happens. He wouldn't have done that. Because that just wasn't his belief. He denounced the Government many times, denounced the NRA, called it as corrupt as our Government. That's the way he was. The only thing that he listened to was the Bible. Those were his exact words. Almost, pretty close.

Mr. TAYLOR. Mr. Rodriguez, in a previous statement you said Koresh used the Bible. Would a more accurate description be that he misused the Bible, that he picked and chose those phrases that he wanted to justify what he wanted to do?

Mr. RODRIGUEZ. Yes, sir, and I'll give you an example on the Second Seal: And lo and behold came a man on a red horse. On his hand, he had a sword. When he explained that to me, he said, right here, Robert, right here, that sword is a rifle. This is what gives me the right to bear the rifles. Not the Government, not the Constitution, it's this right here, that sword in his hand is the rifle.

Mrs. THURMAN. Mr. Taylor, in reclaiming my time, I need to give an opportunity to Mr. Brewster for 2 minutes.

Mr. BREWSTER. Thank you, Mrs. Thurman.

Mr. Merletti, I was kind of surprised a moment ago when the question was asked about the hearings and the testimony thereof, that you held up the blue book and said everything I've heard in here was in the blue book. As one who feels I've learned quite a bit out of the hearings, there's several things that I've heard that I don't think are in there. Maybe I've overlooked them.

I can't find anywhere in there that said—mentioned that Mr. Chojnacki is being sued for over \$2 billion by different people involved, and that he has some lawsuits against others. I don't find where it has a Joyce Sparks advised ATF personnel that the raid shouldn't be done. In fact, I don't even find where Mr. Rodriguez,



as he testified earlier, is stated in there as having a feeling that suicides were inevitable. Are those in fact in there?

Mr. MERLETTI. Sir, the part about Mr. Chojnacki being sued, that may have happened after the record came out. I am not sure of that. There's nothing about lawsuits in the book. The part about—refresh my memory, what are the other two?

Mr. BREWSTER. Ms. Sparks testified that she advised ATF not to do the raid, nor the raid at the end, and also that Mr. Rodriguez testified today he had a feeling that suicides were inevitable after talking to Mr. Koresh. Just the point that I think I've learned quite a bit out of that, it's not in the book, and you testified that everything was in the book.

Mr. MERLETTI. The part about the suicides is brought out when Mr. Buford interviews Marc Breault.

Mr. BREWSTER. Mr. Rodriguez today, the guy who had talked with Koresh on numerous times, I don't find that anywhere in the book. Nevertheless, my point is, I think we've had a lot of good testimony that most of us didn't know, maybe you did, but it's certainly not in the book. Couple of things.

Mr. Ballesteros, Mr. Williams, were you involved in the training at Fort Hood by the Army? Either of you?

Mr. WILLIAMS. Yes, we were—yes; we were.

Mr. BREWSTER. Both of you were?

Mr. WILLIAMS. Yes.

Mr. BREWSTER. Was element of surprise mentioned there, the fact that they wouldn't know you were coming, was that part of the plan?

Mr. WILLIAMS. Part of the plan was the cattle trucks, due to the fact that that's a rural area, and cattle trucks are seen all around. And driving up in that would bring up no suspicions as we were coming. If we was driving a—

Mr. BREWSTER. Did you know that when you went to the door, when you started to the door, that he knew you were coming and could be—could have an ambush set for you?

Mr. WILLIAMS. Yes; we knew when we went to the door they knew we was coming, yes.

Mr. BREWSTER. Both knew—that he knew you were coming and an ambush was possible?

Mr. WILLIAMS. We didn't know about the ambush but we knew he knew we were coming.

Mr. BREWSTER. But you did know he was a violent sort of guy?

Mrs. THURMAN. Mr. Brewster, I need to reclaim my time and give 2 minutes to Ms. Slaughter from New York.

Ms. SLAUGHTER. Thank you.

Mr. Cadigan, a lot has been made of the fact that an outside group wanted to go down to Texas and x-ray those guns to make sure they would really altered. Now you're the FBI gun expert. What do you know about x-raying guns?

Mr. CADIGAN. Well, in my particular opinion, that would—x-raying the guns can certainly be done. It would be a waste of time.

Ms. SLAUGHTER. Is that a normal procedure, to x ray guns?

Mr. CADIGAN. No, ma'am.

Ms. SLAUGHTER. How did you determine that guns had been altered?

Mr. CADIGAN. I examined each one of the firearms that was submitted to the laboratory, and as I mentioned this morning, it was 297 firearms in various states or various conditions. Of those that I determined were fully automatic, I looked at each one of the firearms and noted by observation under the microscope the parts that were necessary to make those firearms fire on the full automatic mode.

Ms. SLAUGHTER. How many did you locate that had been—had been converted?

Mr. CADIGAN. There were 48 that had been modified out of the 297.

Ms. SLAUGHTER. One question I would like to ask, Mr. Williams, if I can follow up, did you say you did know when you started on the raid that Koresh knew you were coming?

Mr. WILLIAMS. Yes, from the information we had at the staging area when we were told that he knew we were coming.

Ms. SLAUGHTER. That he knew you were coming.

Mr. WILLIAMS. Yes.

Ms. SLAUGHTER. My understanding was that from what I heard, Mr. Sarabyn did not really believe Mr. Rodriguez when he said that. As I understand Mr. Rodriguez's testimony he said that he was nervous. You said what is he wearing and then hung up the phone, is that basically it?

Mr. SARABYN. I asked a series of questions, but it was clear in my mind I thought that he did not know that we were coming at that time.

Ms. SLAUGHTER. Not unless you had been notified.

Mr. SARABYN. If he had said those words, I repeated those words, but that I thought we could safely execute the warrant.

Ms. SLAUGHTER. So you did notify the men that were going on that David Koresh—

Mr. SARABYN. I passed on the words that Robert told to me to all the commanders and everybody in the staging area.

Ms. SLAUGHTER. And Mr. Rodriguez, my understanding from what you have said and what I have come to believe myself is that suicide was inevitable because they wanted to die; is that not correct? Their prophecy would not come true unless they died.

Mr. RODRIGUEZ. In my own opinion—

Ms. SLAUGHTER. In fire and explosion, as I understand it.

Mr. RODRIGUEZ. In my opinion, yes, ma'am.

Ms. SLAUGHTER. Is it your belief that they set the fire?

Mr. RODRIGUEZ. Well, there was evidence that they did.

Ms. SLAUGHTER. Did you have any indication while you were there on that morning, or had you heard anything at all in your conversations with David Koresh—

Mrs. THURMAN. I need to reclaim my time.

Ms. SLAUGHTER [continuing]. That in the event that someone should come that they would set a fire from inside that compound?

Mr. RODRIGUEZ. Well, all I did during that time was just refer to the Sixth Seal and that would tell you what was going to happen.

Ms. SLAUGHTER. I'm not familiar with that I am afraid.

Mr. RODRIGUEZ. OK. You know, if you go to the Sixth Seal, it describes the final destruction of the Earth with earthquake and people die, people being swallowed up. That is—is——

Mrs. THURMAN. I need to reclaim my time now and yield to Mr. Schumer.

Mr. SCHUMER. OK, I guess I have 7½ minutes. I yield 1 minute to Mr. Taylor.

Mr. TAYLOR. Just very quickly, Mr. Rodriguez.

Mr. RODRIGUEZ. Yes, sir.

Mr. TAYLOR. Again, when Koresh said neither the ATF nor the National Guard will get me, that is obviously very strong words, obviously had a very strong effect on you. Did that statement somehow get conveyed to the gentlemen on the other end of the table who made the decision to proceed?

Mr. RODRIGUEZ. Mr. Taylor, I very clearly and very emotionally advised him that the—that he knew that the ATF and the National Guard were coming.

Mr. TAYLOR. I understand, sir. But it's one thing to know, for example, that someone is coming to arrest me, get the message that, hey, they know they're coming. It's another thing they know they're coming and he has said they will never take me.

Did that second part of the message get conveyed to the people farther up the decision——

Mr. RODRIGUEZ. Yes, sir.

Mr. TAYLOR [continuing]. Making process? You got the message across that he said he would never be taken alive?

Mr. RODRIGUEZ. Not like that, no, sir.

Mr. TAYLOR. What did you get across?

Mr. RODRIGUEZ. Just that he said that the National Guard—ATF and National Guard were coming. They got me once and they'll never get me again.

Mr. TAYLOR. You relayed that message.

Mr. RODRIGUEZ. Yes, sir.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. SCHUMER. Thank you. I yield 1 minute to Mrs. Thurman who generously gave me back time.

Mrs. THURMAN. I am just curious because in my opening statements I talked about, I think, what the other half of these hearings is, what has now happened to change the way we do business. In your report or in the blue book, as we've talked about, there have been several areas that were looked at: No meaningful contingency plan, command and control flaws, general command structure, those kinds of things.

And I want to ask those that are on the line every day, have you seen, Mr. Buford, Mr. Rodriguez, Mr.—I'll get it wrong—Mr. Williams and Mr. Ballesteros, can you tell me in your duties today, have you seen these particular questions being addressed in the agency so that, in fact, this country will never have to go through this again?

Mr. RODRIGUEZ. As for me, I have no—I don't have too much contact with headquarters. I know there's some things that the agency is trying to change. Whether they are being addressed or not, I really can't tell you because it hasn't been funneled down to—to the agents.

Mr. SCHUMER. Thank you. Two minutes to Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Schumer.

Thank you for the time being yielded. Mr. Williams, it seems that there was some questioning of you earlier that either attempted to place blame—and I am trying to clarify—as you were moving toward the door of the compound, you were following orders, is that not correct?

Mr. WILLIAMS. That's true.

Ms. JACKSON LEE. Did you have in your possession a search warrant?

Mr. WILLIAMS. No.

Ms. JACKSON LEE. But you were at that time following orders?

Mr. WILLIAMS. Yes.

Ms. JACKSON LEE. You were at the point of moving toward that door under someone's instructions that we were now beginning the raid; is that my understanding?

Mr. WILLIAMS. Yes.

Ms. JACKSON LEE. All review of details, if they had to be reviewed, some superior had reviewed them, whether you were involved in the review inside that trailer or whether you were in the trailer, you had to move forward because someone said move forward.

Mr. WILLIAMS. That's correct.

Ms. JACKSON LEE. Mr. Rodriguez, you got a crash course, I understand, in the teachings of Mr. Koresh.

Mr. RODRIGUEZ. Yes, ma'am.

Ms. JACKSON LEE. We keep trying to isolate or try to understand this sect or this group. I don't want to denigrate them, but I do know that many read the Bible and understand that render under Caesar what is his, and so religions can have respect for Government. But you went inside there to create an atmosphere in order to make it safer.

Were you in there to cause a disturbance or were you sent in there so that some information could come out to help this raid work without loss of life? What do you think you were in there for?

Mr. RODRIGUEZ. My main objective was to obtain as much intelligence as possible, and this intelligence, of course, was going to be used to make this raid a success and safe.

Ms. JACKSON LEE. So when you learned all these biblical things that you didn't know anything about, it was to gain confidence from this individual and to provide that intelligence out to your superiors so it could work in a safe manner.

Mr. RODRIGUEZ. Yes, ma'am.

Mr. SCHUMER. Thank you. Ms. Jackson Lee.

Ms. JACKSON LEE. And you did give the information about finding out about—that he knew about it to your superiors.

Mr. RODRIGUEZ. Yes, I did.

Ms. JACKSON LEE. Thank you, Mr. Schumer.

Mr. SCHUMER. Thank you. We reserve the rest of our time, 3½ minutes.

Mr. MCCOLLUM. I'm going to do similarly. I know we have 6 minutes left over here. I'm going to yield 3 of those minutes, divided 1 minute to Mr. Chabot and 2 minutes to Mr. Mica.

Mr. Chabot, you are recognized for 1 minute.

Mr. CHABOT. Thank you, Mr. Chairman. Mr. Black, at the end of October of last year, you fired Mr. Sarabyn and Mr. Chojnacki. You said they lied. You said that Mr. Sarabyn made false statements in the course of a criminal investigation. You said that they had altered documents. And you said that no penalty short of firing would be sufficient.

Then as you have also testified, you turned around just 2 months later and rehired them with backpay and even paid their attorneys' fees. Now, maybe I am wrong in this assumption, but I just cannot believe that the ATF would rehire people it truly believed had obstructed an investigation by lying and altering documents. I just can't believe that you would hire anyone, any such person for any position at the ATF, without being forced to. So that seems to leave one of two explanations for the rehiring: Either the Treasury report that lays the blame on Sarabyn and Chojnacki is faulty, or someone was trying to buy their silence by rehiring them.

Mr. Black, which was it?

Mr. BLACK. I would have to say it's neither. We are not questioning and we never questioned the motives of either Mr. Sarabyn or Mr. Chojnacki. We believe they made a good-faith effort to carry out their duties. We believe they were doing what they thought we expected.

However, having said that, we faulted their judgment, we faulted their supervisory judgment for going ahead with that raid. I think, as you've also heard today, there is conflicting testimony. They make a compelling case, so the agents make a compelling case.

Mr. MCCOLLUM. Mr. Black, I'm going to have to cut you off because I only have 1½ minutes to yield to Mr. Mica and I need him to ask his question. Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

Mr. Hartnett, did you go to Mr. Ron Noble, who is Under Secretary of Law Enforcement, after Chojnacki and Sarabyn had been fired and say that it was your view that he—that if he did not rehire these agents, their truthful story and the fact that it had been covered up would eventually become public?

Mr. HARTNETT. No, sir, I never did. I haven't seen Mr. Noble since 2 years ago.

Mr. MICA. You never went to Mr. Noble and asked him about this?

Mr. HARTNETT. No, sir.

Mr. MICA. Did you ask him to rehire these individuals?

Mr. HARTNETT. No, sir, I did not.

Mr. MICA. Mr. Black. Mr. Black, you signed the settlement agreements to rehire Sarabyn and Chojnacki; is that correct?

Mr. BLACK. That's correct.

Mrs. THURMAN. Did Mr. Noble participate in negotiating the agreements?

Mr. BLACK. As far as I know, he did not participate. I believe that our lawyers may have discussed it with him, but he did not participate.

Mr. MICA. Was Mr. Noble in charge of the Treasury report that turned out to be the reason they were fired that everyone's referred to?

Mr. BLACK. I think that's fair to say, yes.

Mrs. THURMAN. Mr. Black, I'm now providing you with a description of Mr. Chojnacki's new job which requires him, and I quote—this is part of the job description provided to me—"serve as an expert witness to provide evidence and facts in civil or criminal trial hearings."

Does it make sense to you to put someone you just fired for lying into a job where one of the major duties is testifying for the Government in court?

Mr. BLACK. I believe that in the role that he was in, he would be testifying as a nonagent. He would be giving advice as far as dealing with the U.S. Customs Service.

Mr. MCCOLLUM. Mr. Mica, I hate to cut you off, but I have to do that to keep 3 minutes of our time over here. I yield to Mr. Schumer for the balance of your time. We will close with 3 minutes.

Mr. SCHUMER. Thank you. And let me just say I think this morning's testimony, I think a number of things have come out pretty clearly.

First is, of course, that Koresh fired first. That's undisputed. Second, that the element of surprise was broken. That's undisputed. Third, that the decision to go ahead once the element of surprise was broken was almost certainly the wrong decision. That's the overwhelming consensus here. And then we get into the debate as to who made the decision to go ahead.

The report says that Mr. Chojnacki, and Mr. Sarabyn made the decision knowing full well that the element of surprise was broken. That's an error in their judgment. Mr. Sarabyn and Mr. Chojnacki basically say that they weren't clear. Certainly, Mr. Sarabyn says he wasn't clear that the element of surprise was broken at that point in time.

Finally, and I think this is a very salient point, the only people on the panel who criticized the Treasury report are the people who are singled out for criticism in the report, in particular Mr. Sarabyn, Mr. Chojnacki, and Mr. Hartnett, that otherwise—and even they agree with most of the report. They simply disagree with the parts of the report where they are singled out for criticism, and I think that speaks fairly well of the report. Mr. Hartnett has issued a very serious charge here, and that is that the report was a coverup.

He said two things. First he said—and he said that, quote, "that the element of surprise was important." He had never given an order to the field commanders that if it was lost they should abort the raid. I would wonder why he didn't if it was a bad thing to do.

Criticizing everyone else, he had the ability to say or certainly advise the head of ATF, don't give them the OK unless surprise is not broken. But second, I'd like to ask you, Mr. Merletti, since you put together the report, was there a coverup of the report? Just answer that yes or no.

Mr. MERLETTI. Absolutely not.

Mr. SCHUMER. So what do you think of Hartnett's—of Mr. Hartnett's charges that there was a coverup?

Mr. MERLETTI. I think they are baseless.

Mr. SCHUMER. And why do you think he's doing it?

Mr. MERLETTI. I believe Mr. Hartnett, in his heart, feels he—he was doing the right thing after the raid in—and basically what ended up happening is Mr. Sarabyn and Chojnacki now blamed the undercover agent, Mr. Rodriguez, who was the hero. They blamed him.

Mr. SCHUMER. Yes. I think it's clear from today's testimony, Mr. Rodriguez, that you and Mr. Ballesteros and Mr. Williams are the heroes and at the very least Mr. Sarabyn changed his story a bunch of times.

Mr. MERLETTI. I believe that ATF was being criticized quite a bit by the media because the line agents were coming out saying the element of surprise was lost. Management was saying it was not lost.

Mr. SCHUMER. Right.

Mr. MERLETTI. I believe—

Mr. SCHUMER. Mr. Buford is also a hero.

Mr. MERLETTI. Yes, absolutely. I am sorry for not mentioning that.

Mr. MERLETTI. I believe that Mr. Hartnett, call it a conscious avoidance of the truth, wanted to defend his agency, and he didn't talk to the line agents. He relied on Sarabyn and Chojnacki and they kept telling him the story that Robert didn't—he—they actually said Robert didn't even tell them that the ATF and National Guard were coming. I believe that is how it all began.

Mr. Hartnett, as the supervisor down there, whether he lied or whether it was a conscious avoidance of the truth, only he knows. But he chose to side with the supervisors.

Mr. SCHUMER. With Sarabyn and Mr.—Mr. Sarabyn and Mr. Chojnacki.

Mr. MERLETTI. Yes; and I believe he was trying to do the best he could to bolster the image of the ATF at that time.

Mr. SCHUMER. Is there any iota of coverup in this report?

Mr. MERLETTI. Absolutely not.

Mr. SCHUMER. I yield back my time.

Mr. CONYERS. Mr. Chairman, could I ask unanimous consent to—

Mr. MCCOLLUM. Without objection.

Mr. CONYERS. Enter a—

Mr. MCCOLLUM. I know what you're going to ask, John. Go ahead.

Mr. CONYERS. I know. I sent it down to you in advance, sir. But Albert Alschuler of the University of Chicago has a—an interesting commentary on the affidavit and the search warrant and I ask unanimous consent that it be entered into the record.

Mr. MCCOLLUM. Without objection, I have a copy.

[The information follows:]

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Thursday, July 13, 1995

Hon. John Conyers, Jr.  
Committee on the Judiciary  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515-6216

Dear Congressman Conyers:

I have reviewed the affidavit of Agent Davy Aguilera in *United States v Vernon Wayne Howell a.k.a. David Koresh*. In my view, the affidavit clearly establishes probable cause for a search of the Mount Carmel commune center in Waco. Indeed, I doubt that any judicial officer of the United States would have declined to issue a search warrant after reviewing this affidavit. The issue before Magistrate Green was not close.

Especially when compared to the affidavits for search warrants used everyday throughout America to justify breaking-down doors in drug cases, Agent Aguilera's affidavit is remarkably thorough and detailed. Although one can think of additional investigative steps that Agent Aguilera might profitably have taken, the affidavit recites the findings of an unusually thorough pre-search investigation. This affidavit is far removed from the sort of "bare bones" affidavit that the Supreme Court condemned in *Aguilar v Texas*.

In judging the sufficiency of this affidavit, one should keep in mind these basic principles of fourth amendment law:

- 1) The constitutional term "probable cause" does not mean "more probable than not." A "substantial indication" that law enforcement officers will find contraband or other evidence of unlawful activity is sufficient.



2) Errors in an affidavit (even deliberate misstatements) are immaterial so long as the remaining allegations establish probable cause.

3) Courts should not construe affidavits technically. These affidavits are likely to have been drafted under substantial time pressure by law enforcement officers, not lawyers (although, to Agent Aguilera's credit, two Assistant United States Attorneys assisted him in drafting the affidavit in this case). The Supreme Court has emphasized that affidavits for search warrants are not "abracadabra" and are not to be judged as entries in an essay contest. For example, a magistrate should be unconcerned that an agent confused the terms "explosives" and "explosive devices" in drafting an affidavit.

4) Evidence of lawful activity (for example, designing a sten gun on a computer or possessing black powder) may help to establish probable cause to believe that unlawful activity is occurring as well. Indeed, a magistrate may consider even evidence of constitutionally protected speech (such as -- most obviously -- a confession of crime). To illustrate: If a corn farmer had purchased unusual quantities of sugar and yeast and had declared that he loved moonshine, hated the IRS, and considered all liquor taxes unconstitutional, a magistrate might consider those circumstances along with others in deciding whether to issue a warrant to search for evidence of bootlegging activity.

5) Irrelevant or doubtfully relevant allegations (for example, allegations of crimes other than the crimes that an agent hopes to establish through his or her search) do not taint a warrant. Indeed, the preferable practice is to err on the side of overinclusion, leaving it to the magistrate to determine the relevance or irrelevance of particular allegations.

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6) Although courts do not allow search warrants to be based on "stale" evidence, they do not condemn the issuance of warrants on the basis of "old" evidence so long as this "old" evidence remains probative. For example, proof that a small quantity of illicit drugs were at a particular location six months ago would not, by itself, establish probable cause for a search of that location today; the likelihood that someone would have consumed or transferred the drugs in the interim would be too great. But evidence that someone was collecting a large quantity of illicit weapons six months ago (and not for the purpose of eating or transferring them), coupled with recent evidence that this activity was continuing, would not be stale. There would be no reason to think that the situation had changed in the interim and every reason to think that it had not. "Stale" evidence and "old" evidence are not identical.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Mark W. Halle", followed by a long horizontal flourish.

Mr. CONYERS. I thank you very much.

Mr. MCCOLLUM. You're welcome. I yield, the 3 minutes I have remaining, 1 minute to Mr. Buyer.

Mr. BUYER. Thank you, Mr. Chairman. I just have a couple quick questions. First, Mr. Sarabyn and Mr. Chojnacki, I was concerned when I read the Treasury report about both of you had not only—you disclose not only ATF's intent to take action against the compound, but also an—but also the anticipated date of that action to the Tribune Herald. Is that true?

Mr. CHOJNACKI. In my meetings with the Herald, the meeting was held when we were planning to execute the warrant prior—on February 24. I was being questioned as to when that was going to take—our raid would be—

Mr. BUYER. Is the Treasury report accurate that you disclosed that ATF was going to move against the compound; is that true from both you gentlemen?

Mr. CHOJNACKI. The date that I gave them I thought was a dodge. It turned out that we had to alter the plan and we inadvertently altered the plan to accommodate or come close to that date. It wasn't an attempt to give them the information as an attempt to not give them the information.

Mr. MCCOLLUM. Mr. Buyer, your time is up. I hate to say that, but it is.

Mr. BUYER. That was the fastest 60 seconds.

Mr. MCCOLLUM. I know it is, but true. I've got 2 minutes to close at this point. I'm going to close by asking three different witnesses three different questions.

I would like for you each to respond directly after I have finished asking the questions of all three, otherwise we won't get these asked.

Mr. Rodriguez, I would like to know if my understanding is correct that you had testified that there was a written raid plan prepared before the raid date, and that the plan was altered? And if that's true, I'd like to know how you came to learn the plan was altered and if you are aware of who altered it.

Now, I'm going to ask that, but hold on to your answer. I want to ask a question of Mr. Chojnacki about the helicopters as to why you were onboard a helicopter that day, the final day of the raid. Were those helicopters any one of the three armed with weapons, and if so, with what weapons? And were any shots fired from the helicopters? OK?

Mr. Hartnett, I want to give you a chance to respond to Mr. Merletti, his last comments that he just made. And if you want to follow up with an answer that was asked earlier about the cameraman that was disturbing you so much, you never got it all out, you will be allowed to have the last word. I'm going to go in that order.

Mr. Rodriguez, about the plan, do you know if there was a written raid plan and whether that plan was altered before the raid, and then if it was, how you came to learn about it?

Mr. RODRIGUEZ. No, sir, I knew nothing about the raid plan.

Mr. MCCOLLUM. All right that answers that very quickly. Mr. Chojnacki.

Mr. CHOJNACKI. To the best of my knowledge, the ATF personnel on those helicopters would have been armed with their 9-millime-

ter sidearm. To the best of my knowledge, not a single shot was fired from those helicopters. I was on that helicopter using it as a command and control platform.

On previous large-scale raids, we had sent commanders up to view the initial stages of the raid and then to quickly come back to the command post to continue on with the regular course of business, in this case particularly a bad move, I understand.

Mr. MCCOLLUM. Mr. Hartnett, would you care to respond to Mr. Merletti or comment on the cameraman question or both if you want?

Mr. HARTNETT. On both, if I may.

Mr. MCCOLLUM. You may.

Mr. HARTNETT. First, on the review itself, I wouldn't say it if I didn't truly believe there were omissions, distortions and false statements in there. I can provide this committee with a list of them.

Mr. MCCOLLUM. I would appreciate it if you would.

Mr. HARTNETT. I will. The report was written in such a way that if you were one of the five managers, anything that's negative, your name is mentioned. If it's positive things you did, you are referred to as supervisors.

They take half statements like the thing about blaming Rodriguez, I was down there a month and a half. Everybody I spoke to had nothing but praise for him. He did a tremendous job. And when I read the review, it's this implication that somehow we're saying because we believe Sarabyn didn't know he lost the element of surprise or whatever term you want to use, that that means he's not telling the truth and that's just not a fact. Both of these men did everything they could.

I don't believe either one of them are lying and I'm not going to stand up here and say that I think one of them was lying or not. Treasury would like to see that. When we were down there at Waco, I told them from the beginning there were conflicting statements right on up the line two and three times a day, but that has nothing to do with whether they're lying.

Now, as far as what I wanted to say about the cameraman, there are a lot of people in the field who felt this needed to be said for a long time. In recent years when law enforcement goes on raids around this country, there is more and more media. There's a competition. They all want to be there. They all want to get the first story. They want to be on the news at 10 or read about themselves in the paper.

Well, that's dangerous. Not a shot would have been fired, not a person would have been injured or would a person died in that raid if that cameraman hadn't told them that we were coming. One only has to look at Oklahoma City and you will see an FBI SWAT team executing a search warrant on a house and there's the camera team following them along. They're in their pocket. It's another Waco waiting to happen.

Twenty years ago, I never ran into a news team when I went on a raid. Now, every time you go out there, they're crawling all over you. Waco's going to happen again. And if the media can't regulate itself, then this body needs to regulate 'em. We've got to prevent those kind of things from happening.

Why should Sarabyn and Chojnacki and Rodriguez have to even make that decision, have to weigh whether Koresh knew we were coming or didn't know we were coming? If the cameraman hadn't told them, they wouldn't even have had to make that decision. That raid would have gone down without anybody being hurt and we would have had those guns away from them. That's all I have to say, sir.

Mr. MCCOLLUM. Thank you, Mr. Hartnett, and I want to thank the entire panel. You have certainly endured a great deal from us over the past several hours, some of you over several sessions of these hearings. We have been indebted to you for both that and, of course, those of you at the front line, regardless of whether or not there is fault assessed in this process, for the service that you have given to your country, we respect that fact. And I think that, again, it is indeed our obligation to say thank you for that.

Some of you have given more than service, you've given a lot of body parts at times to these things and we are indeed grateful for that fact and understand it. I want to dismiss this panel now and go on to introduce the next one. But again, thank you for coming today. As this panel clears, I have the second panel to introduce. But they are not in the room, so we will wait just a moment for that to occur.

Mr. CHABOT. Mr. Chairman.

Mr. MCCOLLUM. Mr. Chabot.

Mr. CHABOT. Just for the record, I'd like to make sure that documents 22, 23, 24, and 25 are included in the record, the ones I referred to.

Mr. MCCOLLUM. The ones you referred to in your questioning?

Mr. CHABOT. Yes, sir.

Mr. MCCOLLUM. Without objection, you have seen those, will be included in the record.

[Brief recess.]

Mr. MCCOLLUM. The subcommittees will come to order. I think it's time we had an introduction of our second panel. They have arrived at this point and we are ready to proceed accordingly.

As you will recall, the second panel of the day and the last panel of this segment of our hearings will be two of the folks who are the most key features of all of this from the Treasury Department and from the ATF. They'll be allowed to make opening statements today. I'd like to introduce the second panel.

Our first witness is Ron Noble, Under Secretary for Enforcement for the Department of the Treasury. This new post, created in 1993, oversees the Treasury's Office of Enforcement, which includes the Bureau of Alcohol, Tobacco and Firearms, U.S. Customs, U.S. Secret Service, and the Executive Office of Asset Forfeiture.

Before joining the Treasury Department in May 1993, Under Secretary Noble was an associate professor at the New York University School of Law. From 1988 to 1989, he served as Deputy Assistant Attorney General, Special Counsel and Chief of Staff at the U.S. Justice Department's Criminal Division. Under Secretary Noble began his public service career in Philadelphia where he was an assistant U.S. attorney from 1984 to 1988. He was sworn in as Treasury Under Secretary for Enforcement on July 7, 1994.

Our second witness on this panel today is John Magaw, Director of the Bureau of Alcohol, Tobacco and Firearms. Director Magaw is a 34-year veteran of law enforcement beginning with his career with the Ohio State Patrol. He became a Special Agent with U.S. Secret Service in 1967 in Columbus, OH.

As a Special Agent, he rose through the ranks in investigative and protective assignments within the Secret Service serving as head of the Washington field office, Deputy Assistant Director for the Office of Protective Research and Deputy Assistant Director for the Office of Protective Operations.

He became Director of the Secret Service in February 1992 and then Director of the Bureau of Alcohol, Tobacco and Firearms in September 1993. I want to welcome both of you here today.

I understand, Mr. Noble, you may run over a little bit on your time, but that Mr. Magaw is making up for that. Overall we're going to have it work out pretty well. So with that in mind since we are allowing you each to make opening statements we will begin, Mr. Noble.

Mr. NOBLE. Would you like us sworn?

Mr. MCCOLLUM. We will swear you in first, that's right. We have to do this under oath. The opening statements, I always have to worry about in that regard. Will you raise your right hand.

[Witnesses sworn.]

Mr. MCCOLLUM. Thank you both. If you will be seated, let the record reflect that both answered in the affirmative.

Mr. Noble, you may begin your testimony.

**STATEMENT OF RONALD K. NOBLE, UNDER SECRETARY FOR  
LAW ENFORCEMENT, DEPARTMENT OF THE TREASURY**

Mr. NOBLE. Mr. Chairman, members of the subcommittees, I have a longer statement that I would like to submit for the record with your permission.

Mr. MCCOLLUM. Without objection, it's admitted for the record. I don't believe we have copies of your statement up here. Do we have copies of anybody's statement?

Mr. NOBLE. I was doing last minute editing so it should be here shortly.

Mr. MCCOLLUM. All right, thank you.

Mr. NOBLE. I speak today on behalf of the brave men and women of ATF. After the failed raid, the deaths of four ATF agents and the tragic fire at Waco, President Clinton directed that Treasury and Justice conduct vigorous and thorough examinations of what had led to the loss of law enforcement and civilian lives.

Secretary Bentsen designated me to lead the Treasury Department's review. He demanded that the investigation be honest, uncompromising and comprehensive. Secretary Bentsen appointed three independent reviewers to provide an assessment of the Treasury Department's investigation and report on ATF's investigation of David Koresh and raid of his compound on February 28, 1993.

Here is what the independent reviewers said about the Treasury Department's investigation and report in letters submitted to the Secretary in September 1993. Pulitzer Prize winning journalist, Edwin O. Guthman, stated, quote, "In appointing the panel of independent reviewers, you said you expected a, quote, 'thorough, com-

prehensive and uncompromising critique,' and that, sir, is what has been given to you. It was a privilege to participate in the review and in so doing I must say I gained enormous respect for the professionalism and dedication with which the investigative team leaders and agents conducted themselves at all times."

Henry Ruth, a former chief Watergate prosecutor stated, quote, "The report insightfully fulfills the purpose of this self-evaluation. The impartiality, integrity, thoroughness and knowledge of the internal review team members have been evident throughout the 5-month intensive investigative process."

Mr. Ruth concludes, quote, "It is my heartfelt hope that you, Mr. Secretary, as a national leader can lead the change of orientation, thought and action so that no more men, women, and children need die in these most difficult of circumstances."

Chief Willie Williams of the Los Angeles City Police Department stated, quote, "I have found that the investigative team which you have assembled is of the highest quality and integrity. These men and women have worked tirelessly to uncover the facts surrounding the events which led up to and included the raid on David Koresh's residence near Waco, TX, on February 28, 1993."

The view of the reviewers has been heard and echoed by the independent Inspector General's Office, Members of Congress, from Treasury's oversight committees and major news publications throughout this country. I would ask the committee to include in the record the letters from the three reviewers to Secretary Bentsen.

Mr. McCOLLUM. Without objection, Mr. Noble.

[Information in subcommittees' files.]

Mr. NOBLE. Thank you. Treasury's Office of the Inspector General determined that the report provides an accurate account of the events. Then Arizona Senator Dennis DeConcini found it thorough, impartial, and self-effacing. Representative Jim Lightfoot of Iowa described the report as thorough in its findings. The Wall Street Journal characterized it as extensively detailed. The Washington Post said it was a thorough and candid account. The Los Angeles Times wrote, quote, "Despite all that went wrong with the raid by the ATF on the Branch Davidian compound last February, the thorough and complete report released by the Treasury Department shows that much in its aftermath is going right."

The New York Times called it brutally detailed, and just last week Time Magazine stated, quote, "Perhaps the harshest critic of the ATF's Waco raid was the Bureau's own master, the Treasury Department."

In the raid's aftermath, the Department launched an investigation by veteran agents from its law enforcement agencies backed up by independent outside reviewers, including Willie Williams, the Los Angeles police chief. The result was a 500-page indictment that pulled no punches, yet whose detail surprisingly went largely unreported.

Yet at these hearings, the very people who are most criticized in the report have boldly asserted that the report is only 70 percent accurate. Certain members of this committee accepted that figure as gospel without any consideration of the source or evidence to support that number. Indeed, none of those criticized articulated

what if any facts in the report were inaccurate, what analysis was flawed.

As Secretary Bentsen observed, it is not surprising that Mr. Sarabyn, Mr. Chojnacki, and Mr. Hartnett disagree with some of the conclusions of the report because they are among those who were criticized and were detrimentally affected as a result of the review's findings.

At today's hearings I have with me almost all of those who worked on the report. They are the finest group of agents and colleagues with whom I have ever been associated. Their dedication, competence, and integrity combine to generate what many consider the finest examination of a law enforcement action ever produced. We stand by our report's facts, analysis, and conclusions as do our independent reviewers.

If the report is only 70 percent accurate, it's 500-plus pages, if it's 70 percent accurate, show us the 30 percent that's inaccurate. For the record, I've heard about the 100-plus witnesses that are going to be called. But for the record, none of the members of the team that generated the Treasury Department's report on Waco were ever interviewed prior to this hearing to determine what they thought about the report, what they thought about Ron Noble. So let me now ask the agents, lawyers, and individuals who gathered the facts and performed the analysis for the Department of the Treasury's report on ATF's investigation to please stand up and be recognized and identified and associated with this report. Thank you.

Every person's name is on this report who worked on it, the masthead, every person's name. Why haven't they been interviewed? Why haven't they been called as witnesses? You accept one person's representation that Ron Noble, lowly Ron Noble was able to orchestrate a coverup using career senior special agents from the Secret Service, Customs, IRS, CID, IRS inspection, all by myself, 45-plus people, people who made their careers during previous administrations.

The American public has a right to know that one of its major departments, the Treasury Department, already has examined issues confronted by this hearing and that Treasury's examination was comprehensive, candid, and accurate. By recognizing this fact, these hearings can help to restore confidence in this country's public servants.

To ignore or deny the quality of the Treasury Department's self-examination could feed the paranoia and suspicion of a small segment of the American public.

Now, what were the major findings? What did the Treasury Department's report find back in September 1993? The Treasury report concluded that ATF, at the request of the local sheriff, properly initiated an investigation into David Koresh and his followers based on information provided by the sheriff. This investigation was predicated on evidence that Federal criminal firearms and explosives laws were being violated. It was not based on Koresh's religious beliefs.

The Treasury report concluded that there was probable cause to believe that people inside the Branch Davidian compound were manufacturing illegal machineguns and explosive devices and con-



cluded, as did the magistrate judge who reviewed and approved the warrant, that probable cause existed.

No facts have emerged during these hearings that undermine that conclusion. Indeed, after the April 19 fire, the Texas Rangers recovered 48 illegal machineguns, illegal explosive devices and illegal silencers and hundreds of thousands of rounds of ammunition from the compound.

Since the Treasury report was issued, 11 Branch Davidians were brought to trial and 8 were convicted of the very firearms offenses that ATF investigated. At that trial, none of the defense lawyers challenged the validity of the search warrant. Indeed, I understand that one of those defense lawyers testified last Friday that the warrant was legally sufficient.

The Treasury Review Team and the six tactical operations experts all concluded that ATF's raid planning was seriously flawed. We admitted it. We said it. We wanted to save lives in the future. Specifically, almost 2 years ago the report concluded that first, intelligence system flaws, including an improperly conducted undercover operation, seriously compromised the planning for warrant service.

Second, because of the flawed intelligence gathering and processing system, the planners did not give sufficient attention to other options, such as trying to arrest Koresh away from the compound.

Third, ATF should have consulted with experts in order to better understand Koresh's likely response to different law enforcement options.

Fourth, the planners did not develop a meaningful contingency plan. Despite the flaws in the planning process, four of the review's five tactical experts who volunteered their time, they were unpaid, concluded that the plan had a reasonable chance of success if all the planners' major factual assumptions had been correct.

The Treasury report concluded that the ATF—that ATF did not mislead the U.S. military or the Texas National Guard in obtaining assistance. Nevertheless, the review, this report found that the standards for nonreimbursable military support were unclear and that more precisely defined criteria needed to be developed.

Although I have not watched all the testimony, it is my understanding that the military witnesses testified that the assistance provided ATF was legal and appropriate and none testified that ATF had lied to the military. I also understand that Congressman McCollum, in effect, took the military-related charges off the table in his statement this morning.

The Treasury report also found that the Treasury Department in Washington, DC, did not require sufficient advance notice of significant enforcement operations to exercise meaningfully its oversight of these operations. We didn't say in the report that the investigation began in June 1992 under a previous administration and continued until January 20, 1993. We didn't say that. We didn't attack a previous Secretary of the Treasury, Deputy Secretary of the Treasury, Assistant Secretary of the Treasury. We attacked the institution of the Office of Enforcement for not having the proper rules and guidelines that require Bureaus to report highly sensitive or unusual operations. We could have, but we didn't.

Nevertheless, even though main Treasury didn't find out about it until February 26, 2 days before the raid happened, on the very day that the World Trade Center bombing occurred where we have people, we have lives, we have offices that are affected by the World Trade Center bombing, what did we do? We didn't know what Waco would be. I didn't even know Waco existed. I am sorry to say that to those of you from Texas. But what do we do on a day when we are worried about the biggest terrorist act in this country's history? Did we do what we could have done? Did we wash our hands of it? Did we say we are not required to give approval, we don't have to give approval, we'll just ignore it?

You do what you want to do. We didn't. We inserted ourselves into the process and got assurances that if anything didn't look right, the raid wouldn't go forward.

Now, I've heard time and time again people mentioning the element of surprise. I want you to look at the section that evaluates the Office of Oversight's role, our role, the Office of Enforcement's role in this book and tell me where it says element of surprise. And even if it does, a condition precedent to a dynamic entry is surprise. Condition equals element.

The report also concluded that the raid should not have gone forward once ATF learned that Koresh knew that ATF was coming 45 minutes in advance of the raid. The report found that the raid commanders failed to appreciate the significance of the information provided by the undercover agent on the morning of the raid and the dangers of proceeding when surprise in the Davidians' conduct were not as planned.

The report also stated that the flawed decision to go forward was not solely a question of individual responsibility on the part of the raid planners. It was also the result of the serious deficiencies in the intelligence gathering, processing structure, poor planning and personnel decisions and a general failure of ATF management to check the momentum of the operation as the circumstances demanded.

Moreover, it found that ATF and Treasury bore responsibility for ATF's late notification on the 26th. Both ATF bore responsibility and Treasury bore responsibility. The Treasury review also uncovered reported disturbing evidence of misleading statements and of deliberate attempts by the raid commanders, Phil Chojnacki and Chuck Sarabyn, to shift blame to undercover Agent Rodriguez, and you heard more of that today.

Finally, the report concluded that ATF agents were brave, they were loyal, and disciplined following David Koresh's murderous ambush. They risked their own lives to save one another and to reduce the chance that innocent Davidians would be killed. And why do I care about the Treasury Department's report?

I feel very strongly about the Treasury report and I would like to tell you why. I don't believe a day has passed since February 28, 1993, that I haven't thought about the murders of Conway LeBleu, Todd McKeehan, Rob Williams, and Steve Willis. I know I was in a position to influence the Acting Assistant Secretary for Enforcement not to proceed—not to permit the raid to proceed. No matter what assurances ATF's then-Director Steve Higgins gave him, I gave the same advice first to stop the raid, then to permit it to go

forward that I would have followed had I been the Assistant Secretary for Enforcement.

I have never shied away from taking responsibility for my advice then nor do I now. I was confirmed by the Senate unanimously as Assistant Secretary in 1993 and again unanimously in 1994 as Under Secretary with everything about my involvement on the record.

In early March 1993, I attended funerals of three of the four murdered agents; two were held the same day in different States so I could only attend three. I do not have the vocabulary to describe the impact of attending the funeral of a law enforcement officer slain in the line of duty. Police officers from throughout the country, State, Federal, or local, attended or sent flowers in recognition of the unity of law enforcement.

Moreover, I felt that the surviving family members gave me more comfort than I gave them. I remember holding Conway LeBleu's son Cameron's hand when I knelt before him. He was 18 months old. I remember Rob Williams' mother holding me in her arms for a long time and telling me that everything would be OK. I remember Steve Willis' father's strength. He said that he was proud of his son because he died doing what made him happy.

While I wasn't able to attend Todd McKeen's funeral, I spoke later with a close family member who said please send me a copy of your report of what happened at Waco before it's made public. I want to know the truth.

Three funerals in three States in 3 days. I'm reminded every day of the dangerous world in which law enforcement operates. Since joining Treasury, I've attended 14 funerals of Treasury agents and employees killed in the line of duty and 8 funerals and memorial services of non-Treasury agents.

Before coming to Treasury the last funeral I had attended was when I was 9 years old. I do not forget that four ATF agents were murdered, three wives are widowed, children are without a father and parents, brothers, and sisters are without a loved one. During the Waco funerals, I saw and met ATF agents for whom I would one day be responsible. I saw the bond among them.

Men and women cried openly and proudly as they laid their brethren to rest. Black and white agents held each other. Female and male agents held each other. I don't believe that Conway LeBleu had been buried before press reports surfaced that ATF went forward with the raid after learning that Koresh had been tipped to the planned raid on raid day.

ATF management did not confirm this fact. It denied it publicly and frequently. I committed myself to finding the truth using the most comprehensive and authoritative review process possible, and since I don't do the work of the good and brave ATF agents or other Treasury agents who risk their lives each and every day enforcing the law against the country's most dangerous criminals, I committed myself to assuring they have the leadership, training, and resources necessary for the work they do.

By setting out the truth, the Treasury Department's report honors the memories of the ATF agents killed at Waco. By instituting reforms, Treasury and ATF have worked to ensure that a tragedy of this kind never again occurs. There has been a lot of discussion

at these hearings about the need to restore faith in Federal law enforcement. I do not believe the American people need their faith restored. They have faith in Federal law enforcement.

Last week as these hearings continued, everyday work continued for line agents of the Bureau of Alcohol, Tobacco and Firearms. That work often places them in the most dangerous neighborhoods pursuing the country's most violent criminals.

On the Monday before these hearings began, an undercover ATF agent shot and killed a suspected member of a murderous crack distribution ring in a crime-ridden New Orleans neighborhood who, while pointing a Beretta 9-millimeter automatic pistol, threatened to blow the heads off both the agent and the person in the vehicle with him. The agent, a Waco veteran, was working on a Drug Enforcement Administration task force along with officers from the New Orleans task force—excuse me, officers from New Orleans Police Department and the Jefferson Parish Sheriff's Office, excuse me.

The task force targets violent narcotics offenders. We thus must remember the violent world in which ATF agents operate. When the New Orleans Times-Picayune reported on the episode on the front page, it did not mention Waco. The people of New Orleans know that whatever mistakes ATF made 2 years ago, it carries out a critical, difficult, and dangerous law enforcement mission fighting violent narcotics offenders and armed career criminals, gangs, illegal gun traffickers, arsonists, and bomb makers.

ATF agents daily place their lives on the line to help make our citizens safer. If the American people are reminded of that during these hearings, I believe the mission of law enforcement and ATF will be strengthened as a result.

Now, what has changed since the report was released? First, ATF has new leadership. Director Higgins announced his intentioned retirement before publication of the report and without reading the report. Secretary Bentsen selected John Magaw, the person seated to my left, then Director of the Secret Service, to become the new ATF Director. John Magaw didn't have to do it. He could have stayed in Secret Service, but he cared about Treasury and he cared about ATF.

After issuing the report, Secretary Bentsen placed five ATF officials on administrative leave, including Mr. Hartnett, Mr. Chojnacki, and Mr. Sarabyn. Mr. Hartnett and Mr. Conroy retired rather than challenge the report's findings. Mr. Troy accepted a demotion in light of the report's findings. Mr. Sarabyn and Mr. Chojnacki were fired because they refused to accept giving up their guns, badges, and ability to enforce Federal criminal law.

Eventually, they repealed the firing and ultimately agreed to give up their guns, badges, and rank. ATF Director Magaw believed it was in the best interest of his Bureau that ATF settle with them to avoid the possibility that the MSPB would later reinstate them with guns and badges despite the validity of the report's findings.

The second change is that I issued a directive in August 1993 requiring that the Office of Enforcement be informed of any significant operational matters that affect any of the Bureau's missions, including major high-risk law enforcement operations.

Third, I instituted new guidelines for sensitive undercover operations. ATF, Customs, Secret Service now have all sensitive undercover operations reviewed by a multiagency committee to ensure maximum planning and oversight. The multiagency committee includes not only representatives from all Treasury Enforcement Bureaus, but also representatives from the Department of Justice's Criminal Division. This procedural safeguard shows the increased oversight by Treasury officials over the most sensitive and dangerous law enforcement operations of the Bureau.

Indeed, had the undercover guidelines been in place in 1992 and early 1993, the investigation of Koresh would have come under close scrutiny by a sizable group of agents and lawyers from a broad spectrum of enforcement activities.

Fourth, we took steps to improve oversight, including formal and informal communication between Treasury's law enforcement bureaus and Treasury. To that end, I established a weekly meeting between the Under Secretary's Office and the heads of each of the Treasury enforcement bureaus and key offices. I also have periodic one-on-one meetings with each of the Bureau heads where policy matters are discussed in great detail. Of course, I also speak regularly and informally with the Bureau heads on both significant and more routine matters.

Finally, I reactivated the Treasury Enforcement Council. The TEC consists of all the Bureau heads. There also are TEC working groups that focus on more specific subject matters. Based on these reforms, an operation contemplated by any Treasury Bureau of the scope and complexity of the Waco raid will come to the attention of a variety of law enforcement authorities as well as my office well in advance of the planned action.

Ordinarily, operational matters are the domain of law enforcement Bureau heads. The job of Treasury is to ensure that the Bureaus have strong leadership and high standards for personnel and they institute proper training and are supported with adequate resources and enforce the law impartially. I thank you very much.

[The prepared statement of Mr. Noble follows:]

PREPARED STATEMENT OF RONALD K. NOBLE, UNDER SECRETARY FOR LAW  
ENFORCEMENT, DEPARTMENT OF THE TREASURY

I welcome the opportunity to testify on the tragic events at the Branch Davidian compound near Waco, Texas, as they involve ATF and the Department of the Treasury. My testimony will focus on the Treasury review, the investigative report on these events conducted by the Treasury Department, and on the policy issues that emerged from them. I would ask the Committees to consider making the full Treasury report, published in September 1993, entitled, "Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell also known as David Koresh" part of the permanent record of these hearings.

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On February 28, 1993 four ATF agents were killed while serving lawful warrants for the arrest of David Koresh, and for suspected illegal firearms and explosives at the Branch Davidian compound. After the siege conducted by the FBI, and the fire set by the Branch Davidians that ended it, the Texas Rangers found 48 illegal machine guns, seven illegal explosives of various types, nine

illegal silencers, and hundred of thousands of rounds of ammunition in a search of the crime scene. A jury in Texas convicted eight of eleven Branch Davidian defendants of crimes relating to these firearms. Eight convicted defendants received sentences ranging from three to forty years, with seven of eight defendants serving sentences of forty years imprisonment.

As the Treasury Report recounted, and the trial record confirmed, David Koresh knew 45 minutes before ATF agents arrived that ATF agents were coming to serve warrants at Mt. Carmel. Rather than submitting to the search and arrest warrants, David Koresh armed himself and his followers, ambushed and killed the federal law enforcement officers. As a result of David Koresh's decision, ATF agents Conway C. LeBleu, Todd W. McKeehan, Robert J. Williams, and Steven D. Willis died. Had David Koresh not committed suicide, we may fairly surmise he would be in federal prison today, serving a prison sentence of at least forty years for firearms violations, and he would have been tried for murder along with his followers, and possibly for other crimes as well..

Any suggestion that David Koresh's murderous response to federal agents coming to serve a warrant -- a warrant for his own arrest on firearms charges based on evidence that was located with him in the compound -- was excusable, or reasonable, or even rational under our system of law is outrageous. And, to lay blame on law enforcement or the federal government for the murder of federal agents, and the deaths of innocent women and children and others, is to ignore the reality that Koresh and the Davidians used their illegally manufactured machine guns to ambush agents performing their duty. Indeed, Koresh is to blame for the deaths of almost one hundred people; it was his overreaction and decision to ambush agents that began this tragedy.

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At the same time, a law enforcement operation in which four agents and as many as six others die must be viewed as a tragedy and a failure for law enforcement. Koresh's direct responsibility for those deaths, and the many more that followed, does not exempt law enforcement from scrutiny. We must ask the question, did so high a price have to be paid in order to carry out government's responsibility to enforce the law? The Treasury Report on the Waco incident concluded that this price should never have been paid. The Report is the most exhaustive, comprehensive, and accurate study of the incident to date. As I will describe in detail below, we concluded that the ATF agents who were sent to execute the search and arrest warrants at the Davidian compound conducted themselves with dedication, discipline, and often heroism. We also concluded in great and unsparing detail that ATF made serious errors in its planning and execution of the raid, and that the Treasury Department's oversight role in law enforcement operations should be strengthened.

The Treasury Report was issued in September 1993. Shortly before its publication, ATF Director Steven Higgins announced his decision to retire. After issuing the Report, Secretary Bentsen placed five ATF officials on administrative leave -- the Associate Director for Law Enforcement, the Deputy Associate Director for Law Enforcement, and the Chief of the Intelligence Division, the operation's Incident Commander (Special Agent in Charge, ATF Houston Division) and the operation's Tactical Coordinator (Assistant Special Agent in Charge, Houston). The law enforcement officials, who occupied the most senior law enforcement positions in the bureau after the director, chose to retire. The intelligence chief was demoted.

In sum, the entire top management of ATF dealing with law enforcement



matters has been replaced.

Secretary Bentsen selected John Magaw, then Director of the Secret Service to become the new ATF director. Director Magaw will testify about the lessons learned from Waco and the changes he has made in ATF. And I will discuss changes in Treasury oversight.

These changes along with the passage of time have greatly strengthened ATF. ATF performs essential and often dangerous work on behalf of the American public every day. An ATF explosives expert, working with a member of the New York City Bomb Squad, discovered the key piece of evidence that enabled ATF, the FBI, and the New York City Police to identify and bring to justice the perpetrators of the World Trade Center bombing. ATF special agents and explosives experts have uncovered key evidence in the Oklahoma City bombing investigation. ATF routinely takes weapons off the street, out of the hands of criminals, making our communities safer. It is ATF that continues to investigate illegal conversion of weapons and seeks to stem the flow of illegal weapons to the streets of our cities.

My goal today is to provide both Committees with a thorough understanding of the Treasury's Report on what happened at Waco, of how Treasury and ATF have responded to that Report, and of the vitally important mission of ATF.

### **The Treasury Report**

After the failed raid and the deaths of four ATF agents, and the fire at Waco, President Clinton directed the Treasury and Justice Departments to conduct vigorous and thorough investigations of what had led to the loss of law enforcement and civilian lives.

Secretary Bentsen designated me to lead the Treasury Department's

review of ATF's and Treasury's involvement. The Review was to extend from the beginning of the investigation through the unsuccessful effort to execute search and arrest warrants and its immediate aftermath. He demanded that the investigation be honest, uncompromising, and comprehensive.

As Secretary Bentsen testified on Friday, he appointed three independent reviewers of national prominence and the highest integrity -- Pulitzer Prize winning journalist Edwin Guthman, Watergate prosecutor Henry Ruth, and Los Angeles Police Chief Willie Williams. Their role was to provide independent guidance to the investigation, consider its findings, and assess the final report. They received no payment for their services. I hereby request consent to include the letters of the three reviewers to Secretary Bentsen in the record of these hearings. Treasury's office of the Inspector General monitored the work of the Review team to ensure that the Review was thorough and unbiased.

Assisted by the Project Director, Geoff Moulton, I assembled an investigative team of seventeen senior investigators from the Secret Service, the Customs Service, the IRS, and the Financial Crimes Enforcement Network. No ATF personnel took part in the Review.

Again to ensure independence, the review team consulted with ten non-Treasury experts in tactical operations, firearms, and explosives. Like the independent reviewers, these ten experts served without pay. By independent, I mean that they were asked to report their own views, not those of the Department of the Treasury. The reports of the independent experts are published as appendices to the Treasury Report.

We all know how difficult it is for any organization to judge its own. It can be especially painful in the law enforcement community where success, and sometimes survival, depends on comraderie and loyalty. One of the senior

executives in my office likened the Waco review to conducting open heart surgery on yourself, without anaesthesia.

In choosing the members of the review team, my first priority was to assemble the best investigative team possible composed of individuals with the integrity and the commitment to find out exactly what happened. I can assure you, the review team exceeded my highest hopes in this regard. At the same time, we also ensured that the investigation team reflected the diversity of this country by including people of color and women. Indeed, the Waco review team included 8 African-Americans, 7 women, 1 Hispanic-American, and 1 Asian-American. In my view Americans needed to know that its government, was diverse and intent on conducting a thorough self-examination of itself.

Over a 5-month period, between May and October 1993, members of the team travelled the country and conducted over 500 interviews to determine what happened near Waco and why. We received unqualified cooperation from more than a hundred of ATF agents who were interviewed. Without their support, our difficult task would have been rendered all but impossible.

There has been a question raised in this hearing whether Treasury engaged in a cover-up designed to hide exculpatory information and did not seek to find the truth. Both the ATF shooting review and the Treasury administrative review coordinated with the Justice Department and the Texas Rangers so that the murder case would not be compromised. This fact was not hidden. Pages 2 and 7 of the Treasury Report state that the Review was conducted carefully to avoid interfering with criminal prosecutions. The Texas Rangers conducted a prompt vigorous investigation and shared their investigative reports with Treasury. Any exculpatory information uncovered during the Treasury Review was shared with the Department of Justice so that

it could be provided to defense counsel.

Secretary Bentsen issued the Report on September 30, 1993. It is 220 pages long, followed by extensive appendices by independent experts. Major newspapers praised the report for its candor and thoroughness.

I appeared before the House Appropriations Subcommittee on Treasury, Postal, and General Government on October 22, 1993 and testified on the Treasury Report.

A report of this complexity and length, with such significant consequences for a government agency, inevitably will have its detractors. But I believe the Treasury Report is the closest to a complete and truthful statement of the facts under examination that is humanly possible in an undertaking of this kind. In this Report, Treasury presented the full facts to the American people. In the two years since the Report was published, even with the renewed focus on Waco, I have heard nothing credible that has led me to question the Report's methodology, its findings, or its recommendations. The only criticism of the Report comes from the people who were responsible for the raid and for permitting misinformation to be spread following the failed raid.

To maintain public confidence in government, citizens must believe that government had the capacity to examine itself when necessary and to take appropriate action in response. Therefore, I look forward in the report of these subcommittees to a resounding affirmation of the Treasury Report.

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The Treasury Report contains five sections of factual account and eight sections of analysis. The Treasury Review focused on the same issues raised in these hearings: (1) Was the investigation properly initiated and conducted? (2) Was there probable cause to seek arrest and search warrants? (3) How was the

raid planned and were other alternatives adequately considered? (4) Was the use of the military appropriate? (5) Did Treasury provide adequate and appropriate oversight? (6) Was the raid properly executed, especially after ATF learned that Koresh knew that ATF was coming? (7) Did ATF officials lie or attempt to cover up the truth?

Today I will focus on the central conclusions of the Report and on the policy areas that have been the focus of questioning during these hearings.

### **The Propriety of Investigating Koresh and Seeking to Enforce Federal Firearms Laws**

The Treasury Report concluded that ATF at the request of the local Sheriff properly initiated an investigation into David Koresh and his followers based on information provided by the Sheriff. This investigation was predicated on evidence that federal criminal explosives laws were being violated. It was not based on Koresh's religious beliefs.

ATF began its investigation of Koresh after receiving complaints from the McLennan County Sheriff's Department in May 1992. The Sheriff was contacted by a United Parcel Service driver concerned about suspicious parcels, including inert grenade casings and a substantial quantity of black powder, that had been received by certain persons at the Branch Davidian compound. As the Report stated, "Because the residents of the Compound were constructing what appeared to be a barracks-type cinder-block structure, had buried a school bus to serve as both a firing range and a bunker, and apparently were stockpiling arms and other weapons, Deputy Weyenberg asked ATF to investigate." Report at 17.

Before opening a formal investigative file, the ATF case agent debriefed the local officials, interviewed gun dealers, and searched national firearms

registries. Based on this information he made a preliminary determination that violations of federal law might be occurring. This was not only proper; ATF would have been irresponsible had it not initiated an investigation.

ATF makes between 500-600 criminal gun cases a year. The average number of guns in each case is 21. Investigations that result in seizures of similar numbers of machine guns as were seized from the Davidian compound are extremely rare. Not more than one similar sized seizure has been made in several years. In 1993, ATF seized 520 guns converted to machine guns. The 48 machine guns that Koresh had amassed is almost 10% of an entire year's seizures. The rarity of such a seizure is compounded when hand grenades, explosives materials, and vast quantities of ammunition are also present. Thus when the ATF case agent learned of the delivery of grenade casings, black powder, and large shipments of firearms, he had more than sufficient reason to begin a thorough and professional investigation.

#### **Enforcement of the Law of the Land and Illegally Armed Religious and Other Groups**

The Review examined, considered and rejected suggestions made by some that the religious beliefs of Koresh and his followers, or Koresh' sexual conduct with minors, triggered ATF's investigation of Koresh. The Report stated:

While some have suggested that ATF targeted Koresh because of his religious beliefs and life-style, the Review has found no evidence of any such motivation.

Report at 121. The Review also challenged those who believe that the government should be deterred from investigating potential unlawful activity because that activity is entangled with religious belief and practice. The Report

stated:

A review of the investigation makes it clear that the ATF inquiry into the activities of Koresh and his followers was consistent with the agency's congressional mandate to enforce federal laws regulating the possession and manufacture of automatic weapons and explosive devices. Indeed, ATF would have been remiss if it had permitted considerations of religious freedom to insulate the Branch Davidians from such an investigation.

Report at 120.

It is worth reviewing the basic principles that apply when law enforcement and religion meet. That a practice has the sanction of a religious group does not mean it is lawful. Many religious practices and rituals have been found to be unlawful and without constitutional protection in particular situations. Polygamy is unlawful. The use of drugs associated with religious practice is not permissible where State law prohibits it. While some may quarrel with these decisions, they must be followed.

ATF generally encounters religious groups only where there are firearms violations to be investigated. Religious groups cannot receive an exemption from firearms laws based on their beliefs or practices. The government must investigate and enforce firearms laws impartially without regard to religion or ideology. There is no exemption for groups that attempt to violate firearms laws in the name of religion. There is also no such exemption for groups with survivalist, violent tax protester, "county supremacy," or for so-called organized or unorganized militia or paramilitary groups with extreme Second Amendment ideologies that may stockpile unlawful weapons against a fantasized or feared federal or United Nations invasion.

On the contrary, it is essential to the American public that public safety be ensured and that all violations of firearms and explosives laws be investigated impartially, whether the investigation leads to the inner cities or mountain strongholds or religious communities.

### **The Probable Cause Investigation**

The Treasury Report concluded that there was probable cause to believe that people inside the Branch Davidian compound were manufacturing illegal machine guns and explosive devices -- as did the Magistrate-Judge who reviewed and approved the warrant. No facts have emerged that undermine that conclusion.

Various commentators have opined probable cause was lacking. Attacks range from technical legal quarrels with specifics of the firearms information in the warrant; to the suggestion that ATF improperly ignored information that David Koresh was a licit firearms dealer, or may have intended to be even he technically was not; to impugning the warrant as insufficient on the grounds that it contained extraneous material concerning Koresh's religious beliefs and his plural marriages with young girls and women at Mt. Carmel. Underlying these attacks is the common theme that law enforcement is hostile to lawful firearms owners, and incomprehending and hostile toward religious interests.

These assertions and opinions are in error. I refer the Committees to pages 17 through 35 and 119 through 135 of the Treasury Report, which set forth the facts developed by ATF's case agent that established probable cause. In addition, the Treasury Report includes the analysis of two non-Treasury weapons experts and two non-Treasury explosives experts, who confirmed that ATF's case agent, the U.S. Attorney's office, and Judge Green had ample evidence to support searching the compound for evidence of the manufacture of



illegal machine guns. The explosive experts concluded that the evidence gathered by ATF established probable cause to believe that illegal explosives were being manufactured.

Indeed, after the April 19 fire, the Texas Rangers recovered 48 illegal machine guns, illegal explosive devices, and illegal silencers and hundreds of thousands of rounds of ammunition from the compound. Not only was there probable cause to search for illegal weapons, illegal weapons were actually found and used against federal agents possessing lawful search and arrest warrants.

I would like to emphasize that any suggestion that the probable cause determination by ATF, the U.S. Attorney's office, and the Magistrate-Judge is evidence that our legal system is hostile to religion is wholly unfounded. ATF had reason to fear that Koresh's willingness to use violence: he had established his control over the Branch Davidian community in a gunfight ended by armed deputies; his rhetoric was threatening and his preaching concerned the approach of the apocalypse; he had extraordinary control over his followers who acquiesced to his sexual activities with numerous unmarried girls and married women at the compound. Based on these facts it was reasonable for ATF to believe that Koresh represented a greater threat than a gun collector who might decide to manufacture and sell unlawful weapons.

What these facts demonstrate is not hostility to religion, but rather that law enforcement cannot afford to assume that unlawful activities are benign merely because they are associated with a religious belief or unconventional lifestyle. Rather, as ATF did here, law enforcement must examine the totality of the circumstances.

Since the Treasury Report was issued, eleven Branch Davidians were

brought to trial. At that trial, none of the defense lawyers challenged the validity of the search warrant. Several of the defendants were found guilty of the offenses referenced in the warrant. Indeed, I understand that one of those defense lawyers testified last Friday that the warrant was legally sufficient.

**The Decisionmaking Process Leading to Forceful Execution of Warrants  
and Analysis of the Tactical Planning Effort**

The Treasury Review team and the six tactical operations experts all concluded that ATF's raid planning was seriously flawed. Specifically the Report concluded that:

First, intelligence-system flaws, including an improperly conducted . . . undercover operation, seriously compromised the planning for warrant service.

Second, because of the flawed intelligence gathering and processing system, the planners did not give sufficient attention to other options, such as, trying to arrest Koresh away from the compound.

Third, ATF should have consulted with psychologists and other experts in order to better understand Koresh's likely response to different law enforcement options. The Report recommended improved access by law enforcement to experts in such fields as psychology, sociology, and theology when dealing with barricade or hostage situations or with suspects with non-traditional belief systems or thought processes unlike those of a standard criminal target.

Fourth, the planners did not develop a meaningful contingency plan. Despite the flaws in the planning process, a majority of the Review's tactical experts concluded that the plan had a reasonable chance of success if all of the planners' major factual assumptions had been correct. The experts disagreed over whether the plan was a good one.

The Report did not take a position on what plan should have been

followed, namely a siege, a raid or dynamic entry, apprehension of David Koresh off the compound, or some other approach or combination of approaches. Since the Report concluded that the plan was based on inadequate intelligence, the Report did not take a position on what plan could have been pursued. Without adequate intelligence it was impossible to determine the best approach in hindsight. Two years after the Report was completed, it remains impossible to retroactively determine the outcome of an alternative plan.

From a policy perspective, the chief conclusion to be drawn from this section of the Review is that there are special considerations in selecting a law enforcement strategy when dealing with firearms violations or any other crimes by religious or ideologically identified groups that are co-located with significant weapons and who may be willing to use violence against law enforcement and/or themselves. The loss of four ATF agents at the Branch Davidian compound was unacceptable. Law enforcement must therefore take a hard look at approaches to enforcing the law -- firearms laws, tax laws, or any other laws - against groups that may have the potential to take up arms or that are potentially suicidal. All approaches, including negotiations and settlement; apprehending the leader away from the weapons and followers; and siege must be considered in each case, before resorting to a dynamic entry.

Treasury Department bureaus have undertaken enforcement actions against members of religious or ideologically identified groups twice since Waco.

On July 27, 1994, the Roanoke, Virginia ATF office arrested two members and associates of a proclaimed militia organization known as the Blue Ridge Hunt Club. Three other persons were eventually arrested. All were charged with conspiracy, possession of unregistered silencers, obliterating serial

numbers, and straw purchases of firearms. The group was involved with a plan to burglarize the National Guard Armory in Pulaski, Virginia, in order to obtain machine guns and other small arms for the group. The plan included the possible killing of police officers, the bombing of power plants, and the creation of diversions in order to slow police response. Because the organization was not co-located in an armed compound, the danger to law enforcement was less. ATF successfully arrested one member at his home and another during a traffic stop away from his home.

On June 3, 1994, the IRS restored the tax-exempt status of the Church Universal and Triumphant, in return for which the Church, headquartered on a 28,000-acre ranch near Corwin, Montana, agreed to stop stockpiling military style weapons, and divest itself of firearms, including two armored personnel carriers and thousands of rounds of ammunition. Under the agreement, the rights of individuals other than those convicted of a felony to own firearms are unrestricted.

These cases demonstrate that when confronted with religious or ideologically identified groups involved with illegal weapons, Treasury bureaus are seeking solutions that pose the least risk to law enforcement, and that respect Constitutional requirements.

Responsible, restrained, and innovative law enforcement is not the full answer to the problems posed by armed groups such as the Branch Davidians. Congress, religious scholars, political scientists, and others must also give consideration to the causes and prevention of the amassing of illegal arsenals and the turning of those weapons on law enforcement, other government representatives, or one another. The Law Enforcement Steering Committee, composed of the Federal Law Enforcement Officer's Association, Fraternal

Order of Police, National Association of Police Organizations, International Brotherhood of Police Officers' Organizations, Police Executive Research Forum, Police Foundation, National Organization of Black Law Enforcement Executives, National Troopers' Coalition, and the Major City Chiefs, in its July 14, 1995 letter to Rep. McCollum and Rep. Zeff, identified some of the relevant areas of inquiry:

- \* the ease with which potentially violent groups amass weapons;
- \* the amassing of weapons and the threat they generate;
- \* weapons are being stockpiled for a purpose, what is it?
- \* the danger of internal terrorism caused by the activities of arsenal gathering groups.

#### **The Posse Comitatus Statute and**

#### **The Policy of Military Support for Civilian Law Enforcement**

The Treasury Report concluded that the ATF did not mislead the U.S. Military or the Texas National Guard in obtaining their assistance. Nevertheless, the Review found that the standards for non-reimbursable military support were unclear, and that more precisely defined criteria needed to be developed. Although I have not watched all the testimony, it is my understanding that the military witnesses testified that the assistance to ATF was legal and appropriate and none testified that ATF had lied to the military.

Because there has been a great deal of confusion about this subject, I will

set forth some additional detail about the statutes that authorize military support for civilian law enforcement. I will then address the policy issue.

### Law and Procedure

The Posse Comitatus Act, 18 U.S.C. § 1385, bars military forces from direct enforcement of civilian law. It does not prohibit all assistance to civilian law enforcement by the military. The support that ATF received did not constitute direct enforcement of civilian law.

The operations of the National Guard units that provided support to the ATF in Waco are not covered by the Posse Comitatus Act. The extent to which a State National Guard may assist civilian law enforcement is a function of that State's law. Federal law affects funding and whether such state-provided support needs to be reimbursed by the law enforcement entity. E.g. 32 U.S.C. § 112.

The extent of the assistance that federal military forces may provide to civilian law enforcement is governed by Chapter 18, Title 10 U.S.C. Congress has authorized the Department of Defense (DOD) to provide military equipment, including spare parts and supplies, and base facilities, to civilian law enforcement entities, for all (not just drug-related) law enforcement purposes. 10 U.S.C. § 372. The restrictions of the Posse Comitatus Act are incorporated by a prohibition on "direct participation in a search, seizure, arrest, or other similar activity." 10 U.S.C. § 375. All of the military support provided to ATF complied with this section.

DOD may provide training to civilian law enforcement in the operation and maintenance of § 372 equipment, and expert advice by DOD personnel, for

all (not just drug-related) law enforcement purposes. DOD personnel may also actually operate § 372 equipment, to the extent such operation does not constitute direct participation in civilian law enforcement. 10 U.S.C. §§ 373, 374. The requirement for reimbursement for such equipment and services is waived if it is provided in the normal course of military operations or training, or if it results in a benefit to the military unit equivalent to what the unit would otherwise obtain from training or operations. 10 U.S.C. § 377(b).

Texas law provides a broad grant of authority to the Governor to use the Guard to support civilian law enforcement. The Governor may employ national guard assets "to assist civil authorities in executing law as the public interest or safety requires . . ." Texas Government Code, § 431.111(b). Congress has authorized federal funding for state National Guard operations done to further drug interdiction and other counter-drug enforcement activities, which results in provision of such support without a reimbursement requirement. 32 U.S.C. § 112. Provision of National Guard support to civilian law enforcement is possible without a drug nexus, where the State is willing and able to provide the service, and the Department of Defense has vetted the request's legality, and provisions for reimbursement.

ATF initially approached the Texas National Guard, seeking aerial reconnaissance of the Davidian compound. The ATF representative was told that such support required a drug nexus, that is, an indication that there was a counter-drug element to the investigation or operation. By this time, ATF had obtained information indicating that there had been a methamphetamine lab at the Davidian compound several years earlier, and that there had been a recent shipment of unspecified chemicals, instruments, and glassware to the compound, suggestive of a current operation. ATF later acquired additional

information suggesting the possible presence of a methamphetamine lab at the compound, including a statement by Koresh to an undercover agent.

This information was provided to the Texas National Guard, and later to officials of the entities which regulated and provided Federal military support, Operation Alliance and Joint Task Force Six. The information was not fabricated and was accurately reported. All of the military entities concerned indicated that they were satisfied with the drug nexus identified by ATF. Thus, ATF uncovered and disclosed, in good faith, information indicative of potential narcotics violations at the Davidian compound. This information was accepted by the state and federal military entities.

Let me repeat what the Treasury Report concluded, what Wade Ishimoto a former Special Forces intelligence officer who served as an independent expert to the Treasury Review, stated in his testimony here, and what the generals who also testified at this hearing stated: ATF did not lie to or mislead the military. ATF never asserted that the central purpose of their planned operation was to eliminate a meth lab. To the contrary, the National Guard and the military were fully informed that the mission was principally focused on unlawful firearms, that ATF was only asserting the possibility of an active meth lab, and that ATF focused on that possibility in response to the Texas National Guard's inquiry.

This conclusion is supported by documentation from the military. ATF's written request for military assistance referred only to a "possible meth lab." DOD's own internal review sent to Commander, Forces Command, JTF 6, shows that DOD knew from ATF that 1989 was the last year for which hard evidence of a meth lab at the compound existed. And a "hot spot" discovered by military overflights confirmed the possibility of a meth lab.



That ATF did not lie or mislead the military is also confirmed by DEA documentation. DEA's coordinator for Operation Alliance attended the February 2, 1993 meeting of Operation Alliance that evaluated the information provided to ATF on a drug nexus, and that approved a request for military assistance based on that information. The DEA coordinator does not believe ATF lied to or mislead the military. Three DEA agents were present at the Command Center to assist ATF on the day of the raid.

From JTF-6, ATF obtained the following support, conducted at Ft. Hood, in Killeen, Texas, by a Special Forces unit which is maintained at JTF-6 to provide such assistance to civilian law enforcement: medical training; communications training; weapon calibration and practice on firing ranges; as well as some critiquing of ATF's rehearsal of the raid, and construction of a door and window frame. The type of support that was provided to ATF by the military, including training, could have been obtained with or without a drug nexus. From the Texas National Guard, ATF obtained the following: overflights that detected "hot spots" consistent with methamphetamine production; tents, office equipment and other administrative support; and three helicopters that were to operate as a diversion at the start of the raid, two of which were specially configured for counterdrug work and funded by counterdrug funds.

The Treasury Report correctly concluded that ATF did not mislead U. S. military or Texas National Guard officials in obtaining their assistance. However, the Treasury Report also suggested that for military support to counterdrug-based civilian law enforcement, neither the laws, nor the regulations and manuals of the military entities, provide a definition of the quantum of evidence necessary to establish a drug nexus, and that more

precisely defined criteria should be developed.

Five independent experts analyzed ATF's use of military support for the Treasury Review. Several opined that ATF should have used helicopters provided by the U.S. Customs Service, which, because they have broader rules of engagement, could have assisted, for instance, in picking up wounded. At least two experts stated that the training ATF received at Fort Hood was excellent and well thought out.

#### Military Assistance to Treasury Law Enforcement

I would like to emphasize that Treasury's experience with the military has been a positive one. The military has provided vital assistance to the Customs Service in the nation's struggle against illegal drug trafficking. The DOD supports law enforcement along our country's borders by providing vehicles and shooting ranges, personnel and equipment to build border fences, air and marine detection and monitoring support, and research and development assistance. The National Guard has provided personnel to the Customs Service at ports of entry, and has been directly responsible for many drug seizures and related arrests. Without these dedicated National Guard members and commitment and support of the military, Customs' and our nation's counter-drug efforts would suffer greatly.

The military's role in selected law enforcement actions other than border interdiction of illegal drugs is also critical. The challenge posed by armed co-located groups willing to use violence against the government or to commit suicide is relatively recent and very uncommon. By way of comparison, the two recent ATF investigations of comparable magnitude were a case in 1992

involving a buy-bust operation in Oregon that resulted in the seizure of 54 Mac-type machine guns. These machine guns were being manufactured for the purpose of selling them for profit, and were not in the custody of a large group occupying a compound whose beliefs included an inevitable violent confrontation with the government. ATF's largest comparable seizure in 1993 involved the execution of a search warrant at two storage lockers in Round Lake, Illinois, in which 15 machine guns, 11 silencers, 3 hand grenades, and approximately 31,000 rounds of ammunition. An outlaw motorcycle organization was allegedly amassing these weapons for the protection of narcotics operations and protection against rival motorcycle gangs. Obviously, a seizure from a storage locker did not pose the extraordinary risks that ATF agents confronted at the Branch Davidian compound.

Where domestic law enforcement confronts groups using military style weapons, in military style settings, appropriate training and support equipment from the military can be very useful. By appropriate, I mean that civilian law enforcement must always define the goals of the operation, and the support it receives must comply with the law.

#### **The Treasury Role On February 26**

The Treasury Report concluded that the Treasury Department in Washington, D.C., did not require sufficient advance notice of significant enforcement operations to meaningfully exercise its oversight of these operations. Nevertheless when informed of the plan in this case, the Office of Enforcement placed a hold on the operation which was removed only after ATF Director Higgins gave additional assurances about the raid plan. In that regard, ATF's maintaining surprise was critical to the raid's proceeding as planned. And, in conducting this analysis, the Treasury Report touches upon issues such

as the danger of micro-managing bureaus by the Office of Enforcement and of the role of consultant, the position which I occupied at the time, in the review of such operations and in the decision-making process concerning such operations.

Secretary Bentsen was out of the country at an important international meeting. The Office of Enforcement notified the Deputy Secretary and the Secretary's Chief of Staff of the February 26 notice received from ATF.

Nothing I have heard in these hearings suggests that conclusions reached by the Treasury Report are flawed in this area. And, the suggestion from one session of these hearings that something was amiss because Secretary Bentsen, had not been notified of the raid plan by Treasury officials or by ATF is plainly wrong. On the contrary, it would have been abnormal for the Secretary to have been involved at this stage of the operation. Indeed, in the prior 11 years Main Treasury had not been asked to approve one raid, nor was ATF ever required to notify main Treasury under previous Administrations.

As a backdrop to this Committee's understanding of the role of main Treasury in the review of the raid plan, it must be understood that February 26, 1993, the day on which the ATF liaison presented a one page notification of the proposed operation in the vicinity of Waco, the brutal bombing of the World Trade Center occurred. Understandably and appropriately, the Office of Enforcement, along with ATF, was responding to the emergency of that event and focusing on the investigation to determine the nature and placement of the explosives used in that tragedy and to assist, however possible, in apprehending the persons responsible for the bombing. Two other Treasury Enforcement bureaus, Customs and Secret Service, have offices in the World Trade Center building. I bring up these facts not to justify why more was not

done when the one page notice was presented -- as I do not feel that more should have been done -- but to explain that the Office on that day was already operating under a crisis mode.

The facts uncovered by the Treasury Report demonstrated that Treasury officials, acting on their own judgment and discretion, and on the advice that I and a former director of the U.S. Marshall's Service, Stanley Morris, gave, raised serious concerns about the need for the dynamic entry plan and the risk it would pose to the safety of innocent women and children, the federal agents participating in the raid and others in the compound. Specifically, given the firepower believed to be possessed by the Davidians and the inclination of them, following the teachings of Koresh, to use force and violence to repel the ATF, it was feared by Treasury officials and myself that lives of innocent people would be in danger.

These concerns were communicated to Mr. Higgins, then the Director of ATF, and the then Acting Assistant Secretary for Enforcement directed that the raid not go forward. Later that evening, Mr. Higgins provided the factual basis for the perceived need to proceed with the dynamic entry raid plan as soon as possible, the reasons why ATF believed that the raid should commence at 10:00 a.m. rather than at dawn, and the reasons why ATF believed that the raid could be executed without jeopardizing the safety of the women and children inside the Compound. Three factors were critical: the men being in the pit; the arms locked in the arms room; the women and children being in the dormitory. For these factors to be present, surprise was necessary. In addition, Mr. Higgins assured that the undercover agent would visit the Compound on Saturday and again on the morning of the raid, to see if there was a change of routine and guaranteed that the raid would not go forward if things did not look right. On

this basis and with the assurance that the raid would be aborted if the routine of the Davidians changed because surprise was lost or because of fear of a raid, the Acting Assistant Secretary for Enforcement removed any barrier to the raid which he previously had placed. I agreed with that decision.

While the Office of Enforcement did not, by any practice, rule, regulation or guideline, need to approve of the plan, once notified of the plan and the intention of ATF to execute it within days, it appropriately voiced its concern and in, exercising its oversight responsibilities of ATF, appropriately directed that the raid not go forward. Indeed, for the Office of Enforcement to have done otherwise would have been a gross neglect of its duty and responsibility. Do not misunderstand this comment. I do not believe, and am not promoting as a matter of policy, that the Office of Enforcement micro-manage the Treasury law enforcement bureaus. To the contrary, the Office of Enforcement did not then and does not now possess the resources to address the complex, confusing, and potentially ever changing set of circumstances characterizing the raid plans and other enforcement operations of over 10,000 Treasury agents. That is not the role of the Office of Enforcement nor should it be.

**The Assault on the Compound,  
The Flawed Decision to Go Forward With the Raid,  
and Other Issues**

An overlooked finding in the Treasury report is one of its most important. "Rank and file agents of ATF who were sent to enforce federal firearms and explosives laws at the Branch Davidian compound did their best to perform their assigned tasks and showed dedication and offer spectacular courage in the face of murderous gunfire." Report at p. 7 Bill Buford, as we learned

last week, lay helpless and exposed to Davidian gunfire when a member of his team dove on top of Buford's body to provide cover. The report describes another incident in which medic Tim Gabourie had his medical bags shot out of his hand by .50 caliber gunfire as he tried to assist Special Agent Willis. There were many more examples of bravery and heroism.

The Report also concluded that the raid should not have gone forward once ATF learned that Koresh knew that ATF was coming. The Report found that the raid commanders failed to appreciate the significance of the information provided by the undercover agent on the morning of the raid and the dangers of proceeding if the conditions were not as planned.

The Report also stated that the flawed decision to go forward was not solely a question of individual responsibility on the part of the raid planners. It was also the result of serious deficiencies in the intelligence gathering and processing structure, poor planning and personnel decisions, and a general failure of ATF management to check the momentum of the operation as the circumstances demanded.

In connection with the loss of surprise, the Treasury Report explained that a cameraman for a local television station told a letter carrier that a raid was imminent. This individual was a member of Koresh's group, and gave the information to Koresh, who then prepared his ambush as opposed to planning to submit to ATF's legal authority. And this led to the ensuing tragedy.

This event underscores the need for a high level of cooperation between law enforcement and the media, so that the interests of law enforcement effectiveness and safety, public safety, and the public's access to adequate information be balanced. This is a complex area, but one I think is very important. The courts are beginning to look at it. Since the Report was

published, a federal court of appeals held that a federal law enforcement agent is not immune from suit by individuals if the agent permitted the media to enter the individual's home without their permission.

### **Post-raid Events**

The Treasury Report fully sets forth the facts of post-raid events. It describes the circumstances under which ATF agents withdrew from their positions around the compound, the retrieval of the dead and wounded agents, ATF's inability and deficiencies in maintaining the perimeter it had established so as to prevent the escape of Davidians who had participated in the ambush and murder of federal agents, and the chaos that resulted at the ATF command post and its resultant adverse effect on communications between commanders and line agents. I will not comment further on these issues other than to refer these Committees to the pertinent sections of the Treasury Report and to say that nothing revealed during these hearings suggests in any way that the findings of the Report are in error.

Two post-raid matters, the decision to seek FBI assistance and the decision to cede control to the FBI, and the misstatements made by ATF management to the public, do require some comment. I will first address the decision to cede control to the FBI.

As noted in the Treasury Report, on March 1, 1993, the FBI, with the full cooperation and encouragement of ATF, took charge of the siege at the Compound. The request that the FBI take control of the siege came from four sources and demonstrates that federal law enforcement agencies can cooperate under the most difficult circumstances in an effort to achieve the goal of the operation.

Shortly after the cease-fire, as ATF assessed the situation and the news of



the tragedy and deaths of the four ATF agents spread throughout the law enforcement community, at least one ATF supervisor suggested to his supervisor that the bureau seek assistance from the FBI's Hostage Rescue Team, known as the FBI HRT. This suggestion was based on the belief that a hostage situation had developed, that ATF did not have the expertise in dealing with hostage situations of this magnitude, and that the FBI did. At about the same time, Assistant United States Attorney Phinizy, one of the prosecutors who had worked on the affidavit supporting the search and arrest warrant, contacted the local office of the FBI and requested assistance. Still later, FBI Director Sessions contact ATF Director Higgins, expressed his condolences for the casualties suffered by ATF and offered the FBI's assistance. And, on yet on another front, I contacted certain high-level FBI officials and, knowing of the FBI HRT, requested that the FBI take control of the developing situation at the Compound. I was advised that the request for HRT's involvement had already been made and that the HRT was on its way to Waco.

The transfer of control from ATF to the FBI proceeded swiftly, efficiently, and almost without incident. While there was some dispute and discussion of which agency would actually control the site, ATF Director Higgins, following discussions with me, agreed to cede control to the FBI. And, given the tragedy that had occurred involving the murder of four ATF agents, some surviving ATF agents, acting out of pride for their agency and loyalty to their fallen comrades, to some degree resisted the FBI's insertion into the situation. These issues were resolved quickly and control was maintained over the site with the joint participation of FBI, ATF and the Texas Rangers.

Federal, state and local law enforcement can work together towards a common goal as was demonstrated in the days following the failed execution of

the raid. ATF, though no longer in control of the crime scene or of the hostage situation, provided essential support to the FBI and the Texas Rangers under the most difficult of circumstances. Amidst the growing public criticism of the raid and mourning the deaths of four comrades gunned down in the ambush, ATF agents stood tall in the continued performance of their duty. In the most trying of times, ATF demonstrated that it is a first-class law enforcement agency.

Finally, the Treasury Review uncovered disturbing evidence of misleading statements and of deliberate attempts by the raid commanders to shift blame to the undercover agent. These ATF supervisors, who were involved in the flawed decision to proceed with the raid plan, notwithstanding their knowledge that the element of surprise had been lost, lied to the Treasury Review team, unfairly tried to place blame on a line agent, and altered documentary evidence in an effort to mislead the Review. Others deceived the public and disregarded directives and requests from Treasury officials, the Justice Department and the Texas Rangers to refrain from further comment concerning the raid until the full facts had been established by the Treasury Review.

This conduct, discussed fully in the Treasury Report, was inexcusable, reprehensible and served no purpose other than to undermine the credibility of ATF. Such conduct was not in the interest of ATF or of the many courageous line agents who risked their lives during the operation. Any desire on the part of these officials to somehow shield ATF from further criticism by making misleading statements or by lying demonstrated gross misjudgment that required action by the Treasury Department. Each of these officials was detrimentally affected or resigned. None of them carries a badge or gun today nor will they ever. The revelation in the Treasury Report of this conduct and the

consequences that followed was painful but necessary to restore public, as well as line agent confidence in the bureau.

Treasury officials, when they learned that misstatements or half-truths had been spoken by ATF officials, directed that no further public comment be made by ATF management unless based on first hand knowledge. This directive initially was disregarded but eventually was followed. Treasury officials did not publicly correct the record until September, 1993, when the Treasury Report was released. While there can be debate over whether Treasury officials should have corrected the record more promptly, the fact of the matter is that to do so prior to conducting a full investigation could have led to inadvertent misstatements, thereby undermining the credibility of the ATF and the Treasury Department and further eroding public confidence. In addition, Treasury officials were concerned that premature public statements might jeopardize the ongoing murder investigations being conducted by the Texas Rangers.

Under these circumstances, responsible conduct required that Treasury officials refrain from further public comment until a full investigation was completed. That investigation concluded in September, 1993.

### **Reactions to the Treasury Report**

The public statement finally issued took the form of an over 500 page Report which candidly divulged the numerous errors, as well as acts of heroism, by ATF.

#### **PART 1: Assessment of Treasury's Report**

Here's what the independent reviewers said about the Treasury Department's investigation and report in letters submitted to Secretary Bentsen

in 1993.

Pulitzer Prize winning journalist Edwin O. Guthman stated, "In appointing the panel of independent reviewers you said you expected a "through, comprehensive and uncompromising" critique and that, sir, is what has been given to you." ... "It was a privilege to participate in the review and in so doing, I must say I gained enormous respect for the professionalism and dedication with which the investigative team leaders and their agents conducted themselves at all times."

Henry Ruth, a former Chief Watergate Prosecutor, stated: "The report. insightfully fulfills the purpose of this self-evaluation. The impartiality, integrity, thoroughness and knowledge of the internal review team members have been evident throughout the five month, intensive investigative process...Mr. Ruth concludes "It is my heartfelt hope that you, [Secretary Bentsen] as a national leader, can lead the change of orientation, thought and action so that no more men, women, and children need die in these most difficult of circumstances."

Chief Willie Williams of the Los Angeles City Police Department stated: "I have found that the investigative team which you assembled is of the highest quality and integrity. These men and women have worked tirelessly to uncover the facts surrounding the events which led up to and included the raid of David Koresh's Residence near Waco, Texas on the 28th of February 1993."

The view of the reviewers has been heard and echoed by the independent Inspector General's Office, members of Congress from Treasury's Oversight Committees and major news publications throughout the country. I would ask the committee to include in the record the letters from the three reviewers to

Secretary Bentsen.

Treasury's Office of the Inspector General determined that the report "provides an accurate account of the events."

Then Arizona Senator Dennis Deconcini found it "thorough, impartial, and self-effacing."

The Treasury Report drew extensive praise when released in September 1993. Treasury's office of the Inspector General determined that the report "provides an accurate account of the events."

Members of Congress gave it high praise. Former Arizona Senator Dennis DeConcini found it "thorough, impartial, and self-effacing." Iowa Republican Jim Lightfoot described the report as "thorough in its findings."

Major newspapers praised Treasury's honesty and candor. The Wall Street Journal characterized it as "extensively detailed." The Washington Post said it was a "thorough and candid account." The Los Angeles Times wrote, "[d]espite all that went wrong with the raid by the [ATF] on the Branch Davidian compound last February, the thorough and complete report released . . . by the Treasury Department shows that much in its aftermath is going right." The New York Times called it "brutally detailed." And just last week, Time Magazine stated:

Perhaps the harshest critic of the ATF's Waco raid was the bureau's own master, the Treasury Department. In the raid's aftermath, the Department launched an investigation by veteran agents from its other law enforcement agencies, backed up by independent outside reviewers, including Willie Williams, the Los Angeles Chief of Police. The result was a 500-page indictment that pulled no punches, yet whose details, surprisingly, went largely unreported.

Yet, at these hearings, the very people who are most criticized in the report have badly asserted that the report is only 70% accurate. Certain members of this committee have accepted that figure as gospel without any consideration of the source or evidence to support that number. Indeed, none of those criticized articulated what, if any facts in the report were inaccurate, nor what analysis is flawed. As Secretary Bentsen observed, it is not surprising that Mr. Sarabyn, Mr. Chojnacki, and Mr. Hartnett disagree with some of the conclusions of the report. Because they are among those who were criticized and were detrimentally affected as a result of the review's findings. At today's hearing I have with me almost all of those who worked on the report; they are the finest group of agents and colleagues with whom I ever have been associated. Their dedication, competence and integrity combined to generate what many consider the finest examination of a law enforcement action ever produced. We stand by the report's facts, analysis and conclusions, as do our independent, outside reviewers. If the report is only 70% accurate as those criticized have asserted, show us the 8\30% inaccuracies. In reality, it is accurate and there has been no cover-up.

For the record, none of the members of the team that generated the Treasury Department's report on Waco were interviewed prior to this hearing to determine what they thought about the report. So let me now ask the agents, lawyers, and individual who gathered the facts and performed the analysis for the Department of the Treasury's report on ATF's investigation of David Koresh to stand.

Thank You.

The American public has a right to know that one of its major departments, the Treasury Department, already has examined issues confronted

by this hearing and that Treasury's examination was comprehensive, candid, and accurate. By recognizing this fact, these hearings can help to restore confidence in this country's public servants. To ignore or deny the quality to the Treasury Department's self-examination could feed the paranoia and suspicion of a small segment of the American public.

#### **Post-Waco Changes: Personnel Changes and Policy Oversight**

What has changed since the report was released? First, ATF has new leadership. Director Higgins announced his intention to retire shortly before publication of the Treasury Report. Secretary Bentsen selected John Magaw, then Director of the Secret Service to become the new ATF Director. After issuing the Report, Secretary Bentsen placed five ATF officials on administrative leave, including Mr. Hartnett, Mr. Chojnacki, and Mr. Sarabyn.

The five ATF officials were: the Associate Director for Law Enforcement (Dan Hartnett), the Deputy Associate Director for Law Enforcement (Dan Conroy), and the Chief of the Intelligence Division (David Troy), Phillip Chojnacki, Special Agent in Charge of ATF's Houston Division, and incident commander at Waco, and Chuck Sarabyn, Assistant Special Agent in Charge in Houston, and the tactical commander on the ground at Waco. The Review found that these officials provided deliberately misleading statements to the press in the aftermath of the raid. As the Treasury Review stated: "Any individual whose judgment or integrity cannot be trusted by those who must rely on those qualities must be removed from a position of discretionary authority." Report at 182-183.

Mr. Hartnett chose to retire. Mr. Sarabyn and Mr. Chojnacki were fired. They appealed the decision to the Merit Systems Protection Board. To avoid the possibility that they would be reinstated in their former jobs, to avoid

re-opening the wounds of agents at ATF, and to permit the agency to move forward, ATF settled with Mr. Sarabyn and Mr. Chonajcki on terms that allowed them to be employed, but removed their law enforcement powers. Both were demoted and removed from their positions as special agents. They no longer carry guns or badges. The intelligence chief was removed from the Senior Executive Service ranks.

As a consequence, the entire top management of ATF dealing with law enforcement matters was replaced. Daniel Black of ATF Compliance Office was elevated to the newly created Deputy Director position. Charles Thompson, formerly Special Agent in Charge of ATF New York office, the largest and among the most successful ATF offices in the country, was chosen to head ATF Office of Criminal Enforcement.

I believe that the decision to terminate these agents was correct. While I would have preferred to see this decision hold, I believe that ATF Director John Magaw acted appropriately in deciding that the cases should be settled. The most important factor to me was that the agents would no longer hold law enforcement positions. As the Treasury Report stated,["Any individual whose judgement or integrity cannot be trusted by those who must rely on those qualities must be removed from a position of discretionary authority"] Report at 182-183.

### **Treasury Reforms**

The tragedy at Waco also demonstrated a serious deficiency in the way the Office of Enforcement supervised its bureaus and showed the need for the earliest possible notification of significant law enforcement actions such as the raid plan executed here. Earlier notification is necessary for there to be meaningful oversight of bureaus which the Office of Enforcement must



exercise.

After the personnel changes, the second change is that I issued a directive in August 1993, requiring that the Office of Enforcement be informed of any significant operational matters that affect any of the bureaus' missions, including major, high-risk law enforcement operations.

ATF. Third, I instituted new guidelines for sensitive undercover operations. Customs, and Secret Service now have all sensitive undercover operations reviewed by a multi-agency committee to ensure maximum planning and oversight. The multi-agency committees includes not only representatives from all Treasury enforcement bureaus, but also representatives from the Department of Justice's Criminal Division. This procedural safeguard shows the increased oversight by Treasury Officials over the most sensitive and dangerous law enforcement operations of the bureaus. Indeed, had the undercover guidelines been in place in 1992 and early 1993, the investigation of Koresh would have come under close scrutiny by a sizable group of agents and lawyers from a broad spectrum of enforcement agencies.

Fourth, we took steps to improve oversight, including formal and informal communication between Treasury's law enforcement bureaus and Treasury. To that end, I established a weekly meeting between the Under Secretary's office and the heads of each of the Treasury Enforcement Bureaus and key offices. I also have periodic one on one meetings with each of these bureau heads where policy matters are discussed in greater detail. Of course, I also speak regularly and informally with the bureau heads on both significant and more routine matters.

Finally, I reactivated the Treasury Enforcement Council (TEC). The TEC consists of all the bureau heads. There also are TEC working groups that

focus on more specific subject matters.

Based on these reforms, an operation contemplated by any Treasury bureau of the scope and complexity of the Waco raid will come to the attention of a variety of law enforcement authorities as well as my office well in advance of the planned action. Ordinarily, operational matters are the domain of law enforcement bureau heads. The job of Treasury is to ensure that the bureaus have strong leadership and high standards for personnel, institute proper training, are supported with adequate resources, and enforce the laws impartially.

For the reasons stated in the Treasury Report, tragedies such as the one at Waco never should happen and never should be permitted to happen again. Under my direction, the Office of Enforcement, though it has improved its oversight, will continue to make strides to assure the American public that Treasury law enforcement agencies act responsibly and at the same time, carry out their critical mission in ensuring the safety of our communities.

#### **The Importance of the Treasury Report**

I don't believe a day has passed since February 28, 1993 that I haven't thought about for the murders of Conway LeBleu, Todd McKeehan, Rob Williams and Steve Willis. I was in a position to influence the Acting Assistant Secretary for Enforcement not to permit the raid to proceed -- no matter what assurances ATF's then Director, Steve Higgins, gave him. I gave the same advice -- first, to stop the raid, then to permit it to go forward -- that I would have followed, had I been the Assistant Secretary for Enforcement. I have never shied away from taking responsibility for my advice, nor do I now. In early March I attended funerals of three of the four murdered agents. Two were held the same day in different states, so I could only attend three. I do not

have the vocabulary to describe the impact of attending the funeral of a law enforcement officer slain in the line of duty. Police officers from throughout the country -- state, local and federal -- attend or send flowers in recognition of the unity of law enforcement. Moreover, I felt that the surviving family members gave me more comfort than I gave them.

I remember holding Conway LeBleu's son Cameron's hand while I knelt before him. He was eighteen months old. I remember Rob Williams' mother holding me in her arms for a long time and telling me that everything would be O.K. I remember Steve Willis' father's strength. He said that he was proud of his son because he died doing what made him happy. While I wasn't able to attend Todd McKeehan's funeral, I later spoke with his father who said: "Please send me a copy of your report of what happened at Waco before it's made public; I want to know the truth."

Three funerals in three states in three days. I am reminded every day of the dangerous world in which law enforcement operates. Since joining Treasury I have attended 14 funerals of Treasury agents and employees killed in the line of duty and 8 funerals and memorial services of non-Treasury agents. I do not forget that four ATF agents were murdered; three wives are widowed; children are without a father and parents, brothers and sisters are without a loved one. During the Waco funerals I saw and met ATF agents for whom I would one day be responsible. I saw the bond among them. Men and women cried openly and proudly as they laid their brethren to rest. Black and white agents held each other. Female and male agents held each other.

I don't believe that the Conway LeBleu had been buried before press reports surfaced that ATF went forward with the raid after learning that Koresh had been tipped to the planned raid on raid day. ATF management did not

confirm this fact; it denied it publicly and frequently.

I committed myself to find the truth using the most comprehensive and authoritative review process possible. And, since I don't do the work of the brave and good ATF agents who risk their lives each and every day enforcing the law against the country's most dangerous criminals, I committed myself to ensuring that they have the leadership, training, resources, and support necessary for the work they do.

#### **ATF's Law Enforcement Mission**

The Treasury Department did a thorough, comprehensive, and unsparingly honest investigation of the tragic events at Waco insofar as they involved and Treasury. Two years after the Treasury Report and the installation of new leadership at ATF the ATF continues to perform essential and often dangerous work for the American people. At this time, the agency should be permitted to move on.

Let me review for you a few facts about the work AT F does every day for the American people:

**\* In FY 1994, ATF special agents forwarded 5,592 cases for prosecution involving alleged violations of the federal firearms, arson, and explosives laws. Of the nearly 9,500 suspects referred for prosecution in those cases, 47 percent were convicted felons, 49 percent were involved in narcotics trafficking and 25 percent had violent criminal histories.**

**\* ATF operates 21 Achilles task forces in 20 major cities with high violent crime rates. The task forces, comprised of ATF special agents and state and local law enforcement officers, target gang violence, drug trafficking, murder,**

rape and other violent crimes. From 1988 through 1994, Aft Achilles program took **6,251 violent criminal offenders off the streets.**

**\* ATF National Response Team** has mobilized 310 times in response to explosives and arson-related crises, including the terrorist bombings in Oklahoma City and the World Trade Center. These incidents involved the loss of **431 lives, 2,324 injuries and over \$3.5 billion in property damage.** Aft also has been called to respond to 10 international crises involving explosives and arson.

**\* From 1989 to 1993, ATF arson investigations helped keep Americans' insurance costs down by saving the insurance industry \$187 million in fraudulent claims.**

**\* The Violent Crime Control Act of 1994 made firearms thefts from a federally licensed gun dealer a federal criminal offense. Since the law went into effect in September 1994, ATF has received 1,688 theft reports involving 13,173 firearms.**

By setting out the truth, the Treasury Report honored the memories of the ATF agents killed at Waco. By instituting reforms, Treasury and ATF have worked to ensure that a tragedy of this kind never again occurs. There has been a lot of discussion at these hearings about the need to restore faith in federal law enforcement. I do not believe the American people need their faith restored, they have faith in federal law enforcement. Last week as these hearings continued, everyday work continued for ATF line agents. That work often places them in the most dangerous neighborhoods pursuing the country's

most violent criminals.

On the Monday before the hearings began, an undercover agent for ATF shot and killed a suspected member of a murderous crack distribution ring in a crime ridden New Orleans neighborhood who, while pointed a Beretta 9mm semi-automatic pistol, threatened to "blow the heads off" of both the agent and another person. The agent, a Waco veteran, was working on a Drug Enforcement Administration task force along with officers from the New Orleans police and the Jefferson Parish Sheriff's Office. The task force targets violent narcotics offenders. We thus must remember the violent world in which ATF agents operate.

When the New Orleans Times-Picayune reported on the episode on the front page, it did not mention Waco. The people of New Orleans, know that whatever mistakes ATF made two years ago, it carries out a critical, difficult and dangerous law enforcement mission, fighting violent narcotics offenders, and armed career criminals, gangs, illegal gun traffickers, arsonists, and bomb-makers. ATF agents daily place their lives on the line to help make our citizens safer. If the American people are minded of that during these hearings, I believe the mission of law enforcement and ATF will be strengthened as a result.

Mr. McCOLLUM. Thank you very much, Mr. Noble. Mr. Magaw, we'll now hear your testimony.

**STATEMENT OF JOHN W. MAGAW, DIRECTOR, BUREAU OF  
ALCOHOL, TOBACCO AND FIREARMS**

Mr. MAGAW. Mr. Chairman McCollum and Chairman Zeliff.

Mr. McCOLLUM. Need to turn on the microphone, Mr. Magaw, I'm afraid.

Mr. MAGAW. Chairman McCollum and Chairman Zeliff and distinguished members of this subcommittee, it's not unusual for me to have to follow Mr. Noble, our distinguished Under Secretary, in speaking events and I know how difficult it is. Today it's even more so. But I am proud to come before you today as the Director of the Bureau of Alcohol, Tobacco and Firearms.

I emphasize my pride because I know the valuable contributions made by ATF as an agency and the quiet heroics of the men and women of ATF who are dedicated to a simple goal of making our communities safer for all. I emphasize my pride also because I know that the portrayal of ATF as an agency that is out of control is unfair and the demonizing of our employees is slanderous.

I feel privileged to lead an agency where in the face of unrelenting attacks, agents continue to put their lives on the line every day to protect the American public and they protect them against the most extremely violent and dangerous criminals in our society.

Every day ATF inspectors and support personnel quietly and efficiently oversee the business compliance through the Federal laws that apply to alcohol, tobacco, firearms and explosives and collect \$13 billion yearly in revenue. Make no mistake about it, I take all criticism of ATF to heart. If criticism is fair, I will move vigorously to correct the problem. If criticism is unfair or unfounded, I will defend our Bureau with equal vigor.

ATF is no threat to the private ownership of firearms.

The law-abiding citizens have no reason to question our agenda. In the area of firearms, our mission is simple, to combat gun violence.

The more successful we are in keeping guns away from criminals and prosecuting those who use guns in crime, the less impetus there is for more gun control. ATF is a neutral regulator.

They're neither progun nor antigun. The Bureau is tasked with equitably enforcing the laws passed by Congress, implementing the regulations, and collecting those taxes. Unfortunately, there are many who do not trust our motives.

Their perception that we pose a threat to legitimate firearms ownership could lead to actions by this body and others, as have occurred in the past, that would cripple our crime fighting efforts. I strongly believe not only the criminal will benefit from the weakening of ATF, State and local law enforcement will lose, the victims of gun violence will lose, and even those interested in less gun control will lose.

We recognize that Waco has contributed to the current level of mistrust. We are hopeful that these hearings will clear the air and finally disprove the sinister betrayal of ATF—portrayal of ATF's actions. When I came to ATF 22 months ago, I found an agency still mourning the loss of its agents.

You saw it here today in the testimony, and still healing its wounds, both literally and figuratively, as well as they were experiencing sympathy and pain for the Davidians injured and killed during the Waco incident. I saw it as my responsibility to provide direction, compassion, and leadership, and to see that ATF emerged from the Waco experience improved and more effective in carrying out its dangerous law enforcement mission.

One thing that I confirmed early was that the image of ATF personnel as sinister agents looking for a fight is utterly at odds with their training, with their character, and with the disposition of the ATF agents I have come to know. In fact, most ATF agents go through their entire career never firing their weapon, except in training.

There is no evil in the hearts and minds of the personnel of ATF. Mistakes are made every day, in every field of human endeavor, including law enforcement. We cannot eliminate mistakes, but we can learn to manage and greatly minimize them.

In addition to that, we can make sure that there are no mistakes, no mistakes made, of the magnitude of Waco. In the aftermath of Waco, we reexamine complete—reexamined completely our way of doing things. We have moved to correct and improve management, training, operational systems, and address the weaknesses identified in the Waco review.

We also needed to address operational deficiencies exposed by Waco in order to emerge better prepared to execute our law enforcement responsibilities in the future. To this end, we engaged in a careful self-assessment of what went wrong and why.

We have considered the views of our own personnel. We have studied the Treasury review, and examined the comments of all the tactical operation experts, as well as those of the independent oversight panel. Today and for the past few days, I have been listening very well to what each of you say in relationship to this event.

We have made significant changes in planning, in execution, in post-raid aspects, including improved capabilities in the area of tactical intelligence. Many of you brought tactical intelligence up in your questions. Huge errors were made there. Any contingency plans, you've talked about those, operational security, oversight and liaison.

As I said before, no law enforcement operation is risk free. And not all mistakes can be eliminated by systematic changes. The human factor of making very difficult decisions under very stressful times in split seconds are inherent in law enforcement.

The existing ATF systems and quality of the people involved have in fact established a remarkable track record as a result—as it pertains to the deployment of their special response teams. What we have learned from Waco, however, is that despite these successes there are a number of areas where we are deficient.

The tragedy of Waco taught us painful but important lessons that will enable us to improve our ability to safely and effectively carry out our mission. That brings us, as I said before, every day, everything that we're doing, in contact with the most violent and dangerous criminals in America. In order for these changes to truly make a difference, though, I am determined that we also needed to completely revamp the way we do business on a broader scale.



I determined that we needed to improve our organizational structure and to establish guiding vision that would give all of us guidance to the action of our—of our operations. I have completed the restructuring of our headquarters, and am now examining—and am now examining the field structure to see what adjustments are needed there.

The successful future of ATF is dependent on a well-trained, professional work force, and to this end I have elevated the training function to an executive level, by creating a training and professional development directorate. In a constant effort to do more with less, I have established a science and information technology directorate to ensure that ATF would keep abreast with all the changes in science and technology, and that will improve our effectiveness.

I have also strengthened our internal review process to provide for a strong, well-staffed inspection and oversight unit, to conduct both operational reviews and internal investigations. This unit reports directly to me.

Additionally, I have established the Office of the Ombudsman, to provide all levels of this Bureau direct access to the Office of the Director. Eight peer groups have been put together, representing a segment of our—each segment of the diverse work force within ATF, and have implemented to focus on equal opportunity concerns.

As I mentioned before, in other testimony, 49.1 percent of this Bureau is minority. The personnel who oversee the EEO program within ATF have been placed in the Director's Office, so that I may have personal daily oversight. The final and most important change that was needed, in my view, was to define the future of ATF.

If we are to know where we're going, we have to know how to look for it. The outstanding work done by ATF has been lost over the months and years since Waco, because of the haze of Waco, as well as the fact—as well as the fact that all ATF jurisdictions are highly controversial. For the outstanding work to be recognized of our personnel, it needs to be part of a defined mission, approved by the U.S. Congress, and understandable to both the ATF personnel and the American public that we serve.

Whether we believe it is fair or not, the fact remains that there has been a critical loss of public confidence in ATF. Our greatest challenge is to recapture public confidence by providing clear accountability for all of our activities. To accomplish this larger goal, I have instituted a strategic management process that began with an analysis of the issues critical to ATF's functions.

Attached to my statement is a written outline of ATF's strategy for the future. And it's a document that looks like this.

This strategic management process is already beginning to radically alter the way we do business. These plans will define our future as an agency committed to ensuring a sound and safer America through innovation and partnerships. From the guiding principles to the basic operational strategy, this process will redefine ATF from top to bottom.

Our new strategic plans will impact on every aspect of our work, from the type of employees we hire, how we train them, what they work on, and how they are expected to relate to the public that

they serve. The basic enforcement strategy has already been defined in terms of what impact can we make on violent crime in this country.

That's the priority. Laws and regulations will not be enforced or resources expended from this Bureau in a vacuum, but as a carefully defined approach that will demonstrably contribute to the overall goal of the violent crime strategy for this Bureau.

The strong partnership and the spirit of cooperation we have long enjoyed with other regulated industries in the law enforcement community are being extended to the firearms industries and firearms owners. The strategic management process also calls for measurable results in all areas to verify our success, or demonstrate the need for additional changes.

Since the strategic planning process will drive budget requests, this feature will also allow appropriators and others to verify that the programs they are funding are being carried out in the proper manner and are providing the benefits promised. While this hearing is an important process for publicly examining ATF's actions at Waco 2½ years ago, it is critical that we not overlook the substantial changes made at ATF since that raid.

Thank you, ladies and gentlemen, on behalf of every man and woman in the Bureau of Alcohol, Tobacco and Firearms, for allowing me to make this statement.

[The prepared statement of Mr. Magaw follows:]

PREPARED STATEMENT OF JOHN W. MAGAW, DIRECTOR, BUREAU OF ALCOHOL,  
TOBACCO AND FIREARMS

Chairman Zeff, Chairman McCollum, and distinguished Subcommittee Members, I am proud to come before you today as the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF). I emphasize my pride because I know the valuable contributions made by ATF as an agency, and the quiet heroic acts of the men and women of ATF who are dedicated to a simple goal of making our communities safer for all. I emphasize my pride too because I know that the portrayal of ATF as an agency that is out of control is unfair, and the demonizing of all our employees is dangerous and wrong. I feel privileged to lead an agency where agents continue to put their lives on the line every day to protect the American public from the most violent and dangerous criminals our country has to offer. Everyday ATF inspectors quietly and efficiently oversee business' compliance with Federal law and collect 13 billion dollars yearly in revenue. I take all criticism of ATF to heart. Let me assure you: If criticism is fair, I will move vigorously to correct a problem. But if criticism is unfair or unfounded, I will defend our bureau with equal vigor.

from the tax and regulatory responsibilities because they are so technically and practically interwoven.

The area of our work that is the most controversial is firearms. As the agency responsible for enforcing our nation's gun laws, ATF has been made to symbolize what some see as a threat to the private ownership of firearms. Let me be clear: ATF is no threat to the private ownership of lawful firearms. Law-abiding citizens have no reason to question our mission. In the area of firearms our mission is simple--to combat gun violence. Our target is criminals who use firearms to do wrong. The enemy of law-abiding gun owners is not ATF; it is violent criminals. Every time someone fires indiscriminately into a school yard, or a crowded court room, or sprays gunfire at the White House, we are reminded once again of the dangerous times in which we live.

The more successful we are in keeping guns away from criminals and prosecuting those who use guns in crime, the safer all Americans are. That is ATF's mission--enforcing the law on behalf of the American people.

Unfortunately, there are many who want to undermine the ATF. I strongly believe that only the criminal will benefit from a weakened ATF. State and local law enforcement will lose, the victims of gun violence will lose, and even those interested in less gun control will lose. We recognize that Waco, more

The Waco Administrative Review identified a number of systemic weaknesses that contributed to bad decisions at Waco. I will address those in a moment. However, the event also reflected on the poor judgment of those responsible for ensuring the safety of both the agents and the residents of the compound. The report also identified improper conduct of several individual ATF agents after the raid. These individuals tried to deflect blame from themselves or the agency for the mistakes of judgment made on February 28, by claiming that they did not know that the raid had been compromised before deciding to go forward. In responses to the press, as well as in briefings to Departmental and Congressional committees, ATF officials provided assurances that the raid commanders did not know that the element of surprise had been lost when the decision was made to go forward.

The Waco Review concluded that ATF was aware the raid had been compromised, that the raid commanders exercised poor judgment in deciding to go forward anyway, and that several individuals had made false or misleading statements after the raid. As a result, Treasury replaced the top three ATF executives, the Director, the Associate Director (Law Enforcement), and the Deputy Associate Director (Law Enforcement). One of the ATF press spokespersons resigned from the Senior Executive Service, and the two raid commanders accepted reassignments to lower grade positions where they no longer serve as special agents. They now serve in non-agent positions where they have no arrest authority, do not carry

The first lesson we have learned is that ATF cannot necessarily carry out alone every conceivable tactical operation we might encounter. Until recently, the assumption in our National Response Plan was that certain operations were larger or more complex than one division could handle, and that assistance from other divisions would be necessary. However, prior to Waco we did not contemplate that some operations might be larger or more complex than ATF is equipped to handle. Waco has taught us that we must be prepared to seek help and assistance from other agencies, and from experts from other public as well as private sectors, when necessary. Second, we have reexamined the entire Special Response Team (SRT) program. The number of teams is being drastically reduced, training for these units is being improved, and new standards are in place that control the circumstances under which these teams are deployed.

Within the context of our own capabilities, the Waco experience has taught us valuable lessons on the planning, execution, and post raid aspects of a raid.

Planning -

- Raid planners must have accurate and timely intelligence.
- Raid planners must have training in a wide range of tactical options.

- At all times, ATF employees must tell the truth, and must admit mistakes. If misstatements are made, they must be corrected as quickly as possible.

The detailed corrective actions I have ordered are described in the report attached to my written statement. My report addresses deficiencies identified in the Waco Review, and identifies the specific steps we have taken to address those problems. These actions will also ensure that we operate in accordance with the more general principles described above. I will take a moment to briefly summarize some of our major actions.

- We have amended ATF Orders to ensure that major operations are supervised by a manager with the proper background and training; the Director's office provides oversight.
- We have provided crisis management training to Headquarters staff, all special agents in charge, and all SRT supervisors and team leaders.
- We have initiated improvements to our tactical intelligence that call for specific program managers to ensure proper review, analysis, and dissemination of intelligence.
- We have taken steps to improve operational security through training and improved technical capabilities.

business on a broader scale. I determined that we needed to improve our organizational structure, and to establish a guiding vision that would give all other actions context.

I have completed the restructuring of the Headquarters staff. The successful future of ATF is dependent upon a well-trained, professional work force, and to this end I have elevated the training function to an executive level position, and created a Training and Professional Development directorate. In the face of constant demands to do more with less, I created a Science and Information Technology directorate to ensure that ATF would keep pace with science and technology developments that can improve our effectiveness. I have also strengthened the internal review processes to provide for a strong, well-staffed inspection unit to conduct both operational reviews and internal investigations.

Additionally, I have established the Office of the Ombudsman to provide all levels of the Bureau direct access to the Office of the Director. Eight peer groups, representing the broad spectrum of our diverse work force, have been implemented to focus on equal employment opportunity concerns.

The final and most important change that was needed was to define the future of ATF. Outstanding work done by ATF has been lost in the haze of Waco and other real and perceived mistakes. For the outstanding work to be recognized, it needs to be part of a



and the State, Federal and local law enforcement community are being extended to firearms industries and firearms owners.

The strategic management process also calls for measurable results in all areas to verify our successes, or demonstrate the need for additional changes. Since the strategic planning process will drive budget requests, this feature will also allow appropriators and others to verify that the programs they are funding are providing the benefits promised to the American people.

While this hearing is an important process for publicly examining ATF's actions at Waco two and a half years ago, ~~it is critical~~ that we not overlook the substantial changes made at ATF since that raid. Thank you for the opportunity to make this statement. I would be happy to answer any questions.

- Raid plans must contain carefully constructed contingency plans so that the momentum of going forward does not take control over rational decision making.
- Raid commanders must be chosen based on their ability to handle the type of operation involved, and not simply on the basis of territory jurisdiction.

Execution -

- Raid commanders must receive accurate and timely intelligence.
- Raid commanders must have clearly defined duties and responsibilities.
- The Incident Commander must be located at the command post where he/she can have access to all relevant intelligence and operational developments.
- There is a need for greater attention to operational security.

Post Raid -

- In crisis situations, agents who are emotionally involved and exhausted should not be left to handle media relations.

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- We have taken steps to improve operational security through training and improved technical capabilities.

- We have improved our ability to respond accurately and effectively to the media and Congress by improving the training of public information officers, and are developing specific plans for dealing with crisis situations.
- We have implemented a new ATF Order specifying undercover guidelines, and instituted an undercover review committee board with representation from ATF, other Treasury agencies, and Justice personnel that must review all sensitive undercover operations.

No law enforcement operation is risk free, and not all mistakes can be eliminated by systemic changes. The human factor of making difficult decisions under stressful circumstances is inherent in law enforcement operations. The existing ATF systems and quality of the people involved have, in fact, established a remarkable track record of success. What we have learned from Waco, however, is that despite these successes, there are a number of areas where we were deficient. The tragedy of Waco taught us painful but important lessons that will enable us to improve our ability to safely and effectively carry out a mission against some of the most violent and dangerous criminals in America.

In order for these changes to truly make a difference, I determined that we also needed to completely revamp the way we do

business on a broader scale. I determined that we needed to improve our organizational structure, and to establish a guiding vision that would give all other actions context.

I have completed the restructuring of the Headquarters staff. The successful future of ATF is dependent upon a well-trained, professional work force, and to this end I have elevated the training function to an executive level position, and created a Training and Professional Development directorate. In the face of constant demands to do more with less, I created a Science and Information Technology directorate to ensure that ATF would keep pace with science and technology developments that can improve our effectiveness. I have also strengthened the internal review processes to provide for a strong, well-staffed inspection unit to conduct both operational reviews and internal investigations.

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defined mission, understandable to both ATF personnel and the public. Whether we believe it is fair or not, the fact remains that there has been a critical loss of public confidence in ATF. Our greatest challenge is to recapture public confidence by providing clear accountability for our activities. That, I give you my word, I will do. To start, I have instituted a strategic management process that began with an analysis of the issues critical to ATF's functions. Attached to my written statement is an outline of ATF's strategy for the future.

We've already begun to radically alter the way we do business. These plans will define our future as an agency committed to ensuring a sound and safer America. We'll do so through innovation and through partnership with our colleagues in State, local, and Federal law enforcement. From guiding principles to basic operational strategies, this process will redefine ATF from top to bottom. Our new strategic plans will affect every aspect of our work from the types of employees we hire, to how they are trained, to what they work on, and how we relate to the public. Our basic enforcement strategy is focused on fighting violent crime. Laws and regulations will not be enforced or resources expended in a vacuum, but as pieces of carefully defined tactics that demonstrably contribute to our overall strategy to fight violent crime. The strong partnerships and the spirit of cooperation we have long enjoyed with other regulated industries

and the State, Federal and local law enforcement community are being extended to firearms industries and firearms owners.

The strategic management process also calls for measurable results in all areas to verify our successes, or demonstrate the need for additional changes. Since the strategic planning process will drive budget requests, this feature will also allow appropriators and others to verify that the programs they are funding are providing the benefits promised to the American people.

While this hearing is an important process for publicly examining ATF's actions at Waco two and a half years ago, it is critical that we not overlook the substantial changes made at ATF since that raid. Thank you for the opportunity to make this statement. I would be happy to answer any questions.

Mr. MCCOLLUM. Thank you very much, Mr. Magaw.

We're going to now begin a series of 5-minute questions under the 5-minute rule. I'm going to take the first 5 minutes to myself.

Mr. Magaw, I want to say, whether or not those of us up here always agree with the policies of ATF, or whether or not there have been mistakes made, and certainly there have been mistakes made by ATF agents and administrators from time to time, I think you should know and the men of ATF should know that we recognize that every day the vast majority of the almost 2,000 ATF agents perform dedicated service to this Nation, and that they act with great bravery on many occasions. We're proud of them for that. We understand they are public servants.

Mr. Noble, I've got a couple of questions for you. And predicate to one of them, I'd like to point out to you that over the last few days we've had several different pieces of information, quite a number disclosed, that were new to us that we did not find at least in the Treasury report regarding what happened at Waco and the events leading up to it.

Among those were Agent Aguilera's invitation by David Koresh to visit the compound to examine the guns that were manufactured I guess at McMahon's gun shop; Ms. Sparks' warnings to ATF not to go forward; the fabrication of drug labs by the ATF or apparent fabrication to get free, unauthorized assistance; Director Higgins' lack of general supervision by Treasury; the Army Judge Advocate who caught an illegal request by ATF before it was granted, fortunately; the failure of ATF agents leading the way in the raid to have warrants in their possession, and quite a number of other things. I could go on listing them.

I just want to make sure that I'm correct. It is not your testimony today, is it, that these hearings have failed to disclose any new information that's not already in the Treasury report? I assume that you recognize we have disclosed things that are not in that report, that it is not total or comprehensive.

Mr. NOBLE. You've said a number of things. It's a very complex set of—

Mr. MCCOLLUM. I don't expect you to respond to every one of those, whether they're right or wrong. I just gave a summary of ideas.

Mr. NOBLE. You did give a summary of facts that I agree with, facts that I think are completely false. You've made a concluding statement that the report is not total and comprehensive, which I disagree with.

Your general principle, I believe, is that hearings are important. I agree with that principle. Facts have come out. I agree with that. Critical facts, facts that make this report less than a hundred percent accurate, facts that make this report less than comprehensive? I don't agree with.

Mr. MCCOLLUM. All I was asking is whether or not you thought there were facts that came out during these hearings that were not included in the Treasury report, and you've answered that question, I believe, yes, there are facts, quite a number of them. Whether you or I would characterize them one way or the other is not what I was asking.



I would also ask you, did you bring the Texas Rangers who are scheduled to testify tomorrow before this joint committee to Washington the week before last or weekend before last, at taxpayer expense? Did you meet with them or have any of the Treasury officials meet with them over a period of approximately 4 days and did you tell them to focus their testimony?

Mr. NOBLE. Again, there are at least four or five parts to the question.

Were the Texas Rangers asked to come to Washington in order to make certain that we were prepared and they were prepared? Yes, they were.

Did the U.S. Government pay for it? I believe it did, and should have, since they were the ones who represented the U.S. Government in the murder trial and the other Federal firearms violations and explosives violations in Texas.

And if I remember correctly, I thought I saw Chairman Zeff meet with the Texas—with some news reporter who was playing some video footage on the Texas Rangers. So I am quite aware that you were aware of it.

Did we tell them to focus their testimony?

Mr. MCCOLLUM. Did you coach them?

Mr. NOBLE. The Texas Rangers?

Mr. MCCOLLUM. Well, did they come here at U.S. taxpayer expense?

Mr. SCHUMER. Just like the witnesses.

Mr. NOBLE. I won't even answer the question, if I tried to coax the Texas Rangers into giving anything other than forthright and honest testimony.

Mr. MCCOLLUM. I didn't ask you if you coached them to give anything other than forthright testimony, Mr. Noble. I just asked you if you coached them, prepared them, or attempted to prepare them, that's all.

Mr. NOBLE. OK. If Ron Noble prepared them, the short answer is no. Did they meet with people on my staff with the intention of being prepared so that he could give you full and comprehensive testimony, absolutely.

Do I think that's appropriate? Absolutely.

Mr. MCCOLLUM. Mr. Noble, would you describe for us in the meetings that you had or the telephone conversations that you had, joining Mr. Simpson on the 24 or 48 hours before the raid of the 28th of February, with Mr. Higgins, the Director of the ATF at the time, could you describe for us what transpired in terms of those things that Higgins told you that were of concern to you that caused you to advise Mr. Simpson not to go forward with the raid on the very first go-round?

What new information did Higgins tell you, that caused you to advise Mr. Simpson to then decide to tell Higgins to go forward with the raid?

Mr. NOBLE. Yes, sir. Mr. Chairman, the first part of your question asserted that I had talked to Mr. Higgins prior to advising Mr. Simpson that the raid could proceed. If I could just go through the chronology—

Mr. McCOLLUM. I would appreciate it. There has been a little confusion about it. We've heard Mr. Simpson testify. I'm not trying to do anything more than give you the opportunity to explain it.

Mr. NOBLE. Thank you, I appreciate that.

I was advised midafternoon on the 26th, Chris Cuyler, who was the liaison from ATF for main Treasury, was waiting outside the office that I was then occupying, wearing a blazer and sort of nervously pacing around while I was trying to gather information relating to the World Trade Center bombing. Eventually he entered my office and began to talk about this planned raid near Waco, TX, on that weekend.

And while he was talking to me, I was thinking that this is something more appropriate for him to tell a person with line authority over ATF. So I suggested that he brief Mr. Langan and Mr. Simpson, the Acting Deputy Assistant Secretary and Acting Assistant Secretary respectively. And he did brief them.

Eventually, later in the afternoon, early evening, they all came down to my office and we reviewed this one-page advisory. And based on what I saw in that one-page advisory, it raised more questions than it answered about the safety of the people, both executing the warrants and inside the compound.

And I just remembered my experience in Philadelphia when the MOVE raid occurred and advised John Simpson that he ought not to permit the raid to go forward. At that point there was a theoretical discussion for some time about what the jurisdictional posture was of the Office of Enforcement's role vis-a-vis the one-page advisory. Was approval required? Was it being asked?

If it wasn't required or wasn't being asked, couldn't we just say it's something that ATF ought to handle? And we eventually decided that we had to approach it as if in light of our positions, would a reasonable person occupying these positions be expected to act affirmatively, despite not being required to do so, to intercede in preventing something from going forward that ought not to go forward?

And I took the position that we had to act and that if I were he, that I would not let the raid go forward.

Mr. McCOLLUM. And then what changed your mind? You have got to follow up and answer that question, I believe, in telling us what changed your mind.

Mr. NOBLE. I was paged while at dinner, after having left the office and having believed that the raid would not go forward because John Simpson, the Acting Assistant Secretary, had called Steve Higgins and told Steve Higgins that he believed the raid ought not to proceed.

When I called back to main Treasury or the number that was on my pager, I don't recall whom I called, but eventually John Simpson was on the phone and he said that Steve Higgins was also on the line and that Steve Higgins had additional information which he wanted me to hear. And the information concerned the length of time that ATF had been planning this operation, the precautions that would be taken to make sure that ATF could tell whether or not Koresh would be alerted to the media stories, the series, the sinful messiah series that would be published the next day, that they were going to send an undercover agent in both Saturday and

Sunday, and that that person would know whether or not something was amiss.

And that they had this plan, that they had planned for, where at a certain hour, at a certain day except the Sabbath, 10 o'clock in the morning, I believe, there would be men located one place, women and children located another place, and the weapons under lock and key in the arms room.

That's the general discussion, and that based on those assurances, their training, that they had planned for it, they had an undercover agent in, I had no more reasons that I could articulate besides an emotional concern in a nonarticulable sense of worry or anxiety. I had no reason to say, in light of this briefing and the assurances being given by the Director of ATF, that his people had been told that if anything didn't look right, they were to call it off, they were going to send an undercover agent in there for that reason, I could no longer say that there was an articulable reason or set of reasons why I would advise the Acting Assistant Secretary to not permit a raid to proceed that we were not required to approve to proceed in light of the assurances given.

That's the best sense I have, sir.

Mr. MCCOLLUM. Mrs. Thurman, you're recognized.

Mr. Conyers, you're recognized for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman. And because of that important line of questions, no objection was made about the number of minutes that the Chair went over his time. And it's quite appropriate except that he ought to note it, like he does with all the rest of us.

Mr. MCCOLLUM. Will the gentleman note I just let him answer the question, and I would do the same for you.

Mr. CONYERS. Well, that's great, I'm glad I pointed it out.

Mr. MCCOLLUM. Thank you, Mr. Conyers.

Mr. CONYERS. Mr. Magaw, let's talk about the positive here.

I begin by commending both of you for two very important statements. Under Secretary Noble, yours was especially poignant, and I don't think it was lost upon anybody that heard it. It almost justifies the huge number of hours and days that we have spent in going over this matter.

Mr. Magaw, let's talk about the changes that have been made as a result of the Waco raid experiences. Could you enumerate them briefly?

Mr. MAGAW. Let me start with the structural changes, because I believe that in coming here and listening to the employees, looking at Waco, looking at their history, which I went back, you know, into the 1970's and looked at the history, I believe that virtually every mistake that was made at Waco was as a result of lack of training.

When you look at each one of them, you had commanders out there who had not been trained to carry on—to carry out their task. You had—you had an undercover operation that was, as you look back on it—remember now in all these answers, this is hindsight. Many things I look at here I can say but for the grace of God there go I. So please remember that as I go along.

But as you look at the undercover, their ability to transfer information, Agent Rodriguez doing a good job of bringing material out of there, but it not being transmitted properly.

The automobiles were not the automobiles of students. Their appearance was a little too old for students.

We probably should have, if we're going to use people of that age, shortened their hair, changed their positions a little bit. A number of those things. So almost everything you look at, it goes back to did they have training?

And over the years, ATF's budget has been cut many times because of the controversial jurisdictions. And this dedicated group has always, instead of doing less out there or not enforcing the laws and taking the chances they do, they took their money out of training, they took it out of computers, they took it out of a lot of office space and equipment.

When you look at their office space and their equipment, it doesn't compare with any bureaus in the Government their size, not near as well done. At any rate, I wanted to make sure in the structure, where was training?

Well, it was buried in management. So as a result it didn't get an equal say. And also, in our black suit, black agent suit, and in some of the complaints that the agents would bring to me, and the personnel throughout the Bureau, is that we don't have a training process by which we're trained every few years.

So all of those kinds of things were important to me. So the structure was a key thing.

I wanted to make sure our technology was up to where it should be, because they have taken money out of that over the years, and I also wanted to make sure of our inspection and oversight responsibility.

Now, in terms of the other side of the issue, the operational parts of it, well, first of all, I don't believe that a Bureau of this size, I don't believe virtually any law enforcement Bureau in this country, by itself, individually, could take on an operation or should take on an operation like this again in the future. It needs the input of everyone. It needs the input of the public sector.

It needs the input of the people who know, you know, you saw Rodriguez this morning, how he feels and how he knew and how he had a feeling for how they would react. You need to—you need to confide in all the outside experts, the people who used to be in the organization. We didn't do a great deal of that.

I believe that the loss of surprise was important, but I believe we would have—we would have changed our decision had our two supervisors been in the right place. The two primary supervisors who made the decision to go ahead, Sarabyn and Chojnacki, were in the wrong place.

You don't belong in the helicopter and you don't belong on the raiding party. You have to be away from where the excitement is. You're not there putting your helmet on like the rest of the people, because once you start that, you're too close, you're too emotional, and they didn't hear what was being said.

Mr. CONYERS. Absolutely.

Mr. MAGAW. They didn't hear what was being said.

Mr. CONYERS. Well, I want to congratulate you on that. I know that you have more.

But let me just get to Under Secretary Noble very quickly. You weren't confirmed at the time that the raid was planned, were you, Mr. Noble?

Mr. NOBLE. No, sir.

Mr. CONYERS. Let me commend you for another thing you did here this afternoon. You didn't come here looking to point the finger somewhere else. You didn't come here looking for cover.

You could have easily faulted a previous administration in terms of the condition of that Office of Enforcement and you haven't mentioned that one time. The policies and the procedures and the practices, you had nothing to do with. This tragedy has shaken all of us up, and certainly yourselves, and I think it's to your credit that you're both here today testifying.

Mr. NOBLE. I would say, sir, that I had the greatest respect for the people who occupied my office prior to me. And I would say also, we benefit because despite whatever procedures they didn't have or policies they didn't have, for however many years that Steve Higgins certainly was the Director of ATF, nothing like Waco had ever happened. No tragedy had happened, they had done their job quite well, yes, sir.

Mr. CONYERS. Thank you very much.

And thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Mr. Conyers.

Mr. Zeliff, you're recognized for 5 minutes.

Mr. ZELIFF. Mr. Noble, Mr. Altman and you have something in common, I believe. You both had that gut feeling in your stomach that this thing wasn't right, it didn't feel right the Friday afternoon that you had a chance to review it.

Mr. NOBLE. I don't think Mr. Altman—I've never heard Mr. Altman—

Mr. ZELIFF. Well, he had a letter that went forth on April 15, and the only thing I'm saying is that the two of you must have this great ability that when you look at something, something gets described to you, and you see something that may be wrong, you put up the red flags, you want more information. That's a compliment.

Mr. NOBLE. I just didn't know that Mr. Altman had any feelings like that prior to the raid on the 28th, I'm sorry.

Mr. ZELIFF. He wrote Secretary Bentsen on April 15 that he felt very bad about the thing moving forward, he felt that some tragedy—a tragic situation would develop, and he felt very bad about it. And I think he wanted someone to address it.

Mr. NOBLE. You're talking about—

Mr. ZELIFF. You had a chance—

Mr. NOBLE. You are talking about the raid on the 28th or something else?

Mr. ZELIFF. No, going back to you—

Mr. NOBLE. Sir, I don't understand the premise, are you talking about Roger Altman's view on the 28th?

Mr. ZELIFF. I'm talking about you. Maybe I confused you a little.

Let me go back, the Friday afternoon where you were brought into this thing and I was trying to compliment you that you had

that gut feeling that things were not right, that you didn't feel the raid ought to go forward, am I right?

Mr. NOBLE. That is correct, sir.

Mr. ZELIFF. OK. Why did we need such a tremendous amount of force to execute the warrants? This is out of the book, on page 178. What precautions were taken to ensure the safety of the agents? Why did ATF have to achieve its mission—could they do it without a shootout?

These are really good concerns, and I think they were the kinds of things that you, before making your decision, you wanted more information about; am I correct?

Mr. NOBLE. I did believe more information was needed, yes, sir.

Mr. ZELIFF. Right, and that all got taken care of in a phone call that you got at dinner?

Mr. NOBLE. As I recall, sir, there was a phone call on Friday night. And during that phone call, Mr. Higgins was attempting to address the core concern, which was that the newspaper series that was going to be published on Saturday might alert Koresh to the investigation by ATF and cause him to change his pattern in some way.

May I finish, please?

Mr. ZELIFF. OK.

Mr. NOBLE. Therefore, Steve Higgins said that they had decided to send an undercover agent in on Saturday morning to determine whether or not there had been any change in Koresh's routine, to determine whether or not he had been alerted in any way by the published newspaper story. And that following that entry and exit, the undercover agent would report to his supervisors, who would report to Washington, who would—

Mr. ZELIFF. So—I don't want to use—I only have 5 minutes.

Mr. NOBLE. You asked me a question about whether or not I decided to let the raid go forward based on what was—told to me during a phone conversation on Friday night. I'm trying to say that that's not all that happened, that I got a call Saturday, where Steve Higgins had talked to John Simpson and reported that the undercover agent had been in the compound on Saturday and had seen nothing to suggest that the newspaper story had alerted Koresh in any other way.

Thank you, sir.

Mr. ZELIFF. So to make a long story short, you felt very comfortable now, you felt very good—

Mr. NOBLE. I did not—

Mr. ZELIFF [continuing]. Concerned about the use of force?

Mr. NOBLE. I did not feel very comfortable about it. I did not feel very good about it. I worry quite frequently when I know that my agents are executing search and arrest warrants. I rarely feel comfortable about it, sir.

Mr. ZELIFF. But I'm just concerned where you had all these good questions that later on none of them got really answered.

Mr. NOBLE. I disagree with you, sir.

Which questions weren't answered?

Mr. ZELIFF. The use of force.

Mr. NOBLE. Pardon me?

Mr. ZELIFF. The use of force, so much force. I think one of the first questions you had here, why did we need so much force to deliver these search warrants?

Mr. NOBLE. And the reason for the number of agents involved was that the men were supposed to be in one location, the women and children were supposed to be in another location, and the arms were supposed to be under lock and key in another location.

Mr. ZELIFF. You indicate that, in your opening statement, that the military involvement was off the table. I don't know where you got that from. As a point of information, I think that we're still talking about the military involvement.

Mr. NOBLE. I thought I was talking about whether or not the use of military was illegal and whether or not the use of the military was based on false information.

Mr. ZELIFF. On the blue book that you were responsible for, and you feel that since then and during all these hearings and the opportunity and the passage of time, do you think anything can be improved on, any new information was received?

Mr. NOBLE. Absolutely.

Mr. ZELIFF. Anything at all that could be beneficial?

Mr. NOBLE. Absolutely. I wonder how we will confront the next armed extremist group, collocated with weapons and explosives and women and children, in a barren area with a fortified compound, willing to do anything and everything to keep law enforcement away. I still don't have the answer to that question.

Mr. ZELIFF. Mr. Noble, we heard from one of the defense attorneys, Mr. Tim Evans, that his client, Mr. Allison, was involved in a secondary shooting involving individuals who tried to sneak back into the Davidian compound. Mr. Evans described two affidavits filed by two different ATF agents, one of whom lied and said that Mr. Allison was shooting and one of whom told the truth and said Mr. Allison's gun had not been shot.

Mr. Noble, that story was not in the Treasury report, was it?

Mr. NOBLE. I'm not familiar with that story, sir. I'd like to see the affidavits and the statements and certainly before this hearing is over I can have someone behind me get to the bottom of it. But I'm just not familiar with that.

Mr. ZELIFF. We learned that Justice Department attorneys and a Deputy General Counsel tried to avoid creating exculpatory evidence by shutting down a shooting review and other interviews designed to get at the truth, and the Justice star prosecutors testified that such practice was irregular and inappropriate. That story is not in the Treasury review as well.

Mr. NOBLE. I don't agree with the facts as you've asserted them. I worked at the Justice Department for some time. I respect the people in the Justice Department.

I think it's a great institution, and I think anyone who would characterize careful prosecutorial work as an attempt not to get or permit Brady material or any other exculpatory material to be given to the appropriate defense attorneys, doesn't understand the Justice Department.

Mr. ZELIFF. Thank you.

Mr. MCCOLLUM. Thank you, Mr. Zeliff.

Mr. Scott, you're recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Noble, just for the record, you and Mr. Magaw, what was your position on the day of the raid?

Mr. NOBLE. I was a consultant for the Department of the Treasury. I had been named as someone who, following a background check and following his nomination and hopeful confirmation, would one day occupy the position of Assistant Secretary for Enforcement.

Mr. SCOTT. You hadn't even been nominated?

Mr. NOBLE. I had not been nominated.

Mr. SCOTT. Thank you.

Mr. Magaw, what was your position on the day of the raid?

Mr. MAGAW. Director of the U.S. Secret Service.

Mr. SCOTT. Thank you.

Mr. Noble, prior to the entry, did you believe that the element of surprise had been lost, based on what you knew at that time?

Mr. NOBLE. What time precisely, sir?

Mr. SCOTT. Prior to the raid going on.

Mr. NOBLE. Prior to the raid going on, the most recent information I had was Saturday morning when the undercover agent came out and at that point I was told that things were as they had been historically. So I was not aware.

Mr. SCOTT. Thank you. And just following up on the facts that we've had come out of this hearing, have any significant facts—have you heard any significant new facts that would lead you to any different conclusions than what's in the book that was prepared almost 2 years ago?

Mr. NOBLE. Absolutely not.

Mr. SCOTT. Thank you. Do you have any different way of dealing with cults based on our experience?

Mr. NOBLE. Yes. We have a different way in that everyone involved in Federal law enforcement, certainly at Treasury, and I would like Director Magaw to follow up, we don't have the answer. We don't have the answer in terms of how to deal with these groups, except to say that we have to recognize that they have to be dealt with very carefully.

And as Director Magaw has already stated, we know we can't do it alone as a Department. It would not be wise to do it as a Department. It would not be wise to do it without consulting the necessary experts in psychology, religion or whatever the special interest might be.

But I don't know if Director John Magaw has anything to follow up on it.

Mr. MAGAW. I guess the only thing I would say, Congressman, is that it's very important for the public and everybody here to know that we don't target cults or we don't target religious groups or we don't target militias. It's usually guns and explosives that bring us to those groups.

And so when you're working guns and explosives, a lot of times it does bring you to them. But obviously the things learned at Waco, what makes them tick, what is their logic, what are the concerns, and most of those groups are not only anti, you know, ATF or antilaw enforcement, they're antigovernment all across the board.



They don't want to pay State and local taxes. They don't want to pay Federal taxes. They don't want to do anything that you and I normally do in carrying out our obligations.

On the other hand, there has to be some work done, and Mr. Noble has started that, between Justice and all the law enforcement so that we do develop better plans to work together.

Mr. SCOTT. In questions that have been raised about the warrant, let me first ask whether you have a different procedure on obtaining a warrant if it's a no knock warrant versus a regular warrant?

Mr. NOBLE. I don't believe there is a difference in procedure between a no-knock warrant and a regular warrant in Federal law. As I understand it, I'm not authorized to practice law in this current position, but it's my understanding that the agents are supposed to make a determination as to how to best serve the warrant, based on the circumstances confronting them at the time.

Mr. SCOTT. The questions have also been raised about the sufficiency of this warrant. We've had introduced into the record an analysis from a professor at the University of Chicago Law School that goes into great detail about the sufficiency of the warrant. His conclusion is it's not only sufficient, but it's more than sufficient, so that—and my judgment, and I believe certainly his judgment, is the legality of the search and the arrest is certainly beyond question.

This weekend, Senator Bradley on, I believe, "Meet The Press," told the—described an incident where a second year law student at Harvard was the guest of some—of a—who is black, was the guest of a partner of his law firm he was interning with in Los Angeles, where he was attending a brunch in one of the partner's houses. He was traveling with a white female intern to the brunch and he was pulled over for no apparent reason, handcuffed and thrown to the ground.

The exclusionary rule has been the traditional tool that we have to protect us and to protect innocent people from the indignities of such arrests. We've had testimony from one of your officers earlier that he certainly has no problem obeying the law, but he is unaware of any sanctions for individuals for making an illegal arrest, sanctions like prosecution for burglary, for being somewhere you're not supposed to be, or cuts in pay or being fired.

We've also heard from the testimony from the attorney for one of the witnesses that this sole tool that protects innocent people is virtually worthless when you're dealing with a search with a warrant, because of the 1984 *Leon* decisions. Even if it were illegal, the evidence would be admissible under the good faith exception and then there's no point in questioning the warrant, and therefore no disincentive for making illegal searches.

Mr. Magaw, on page three of your testimony, you've indicated that law abiding citizens have no reason to question the mission of the ATF, so my question is whether or not there's any reason that you can't confine yourself to only legal searches and let law-abiding citizens know that they'll be left alone because we have a strong exclusionary rule?

Mr. MAGAW. I like the exclusionary rule. I don't think we need to change it. I've used it for 34 years very successfully.

If you make a mistake, it won't allow you to do that. *Miranda* was set up years ago because, and I can remember learning that as a young officer, because law enforcement officers did things they ought not to do. And so while we're all out there trying to be the very best professionals we can, we need guidelines, we need restrictions, and so I'm not one to ask for that exclusionary rule change.

Mr. MCCOLLUM. Thank you, Mr. Scott.

Your time has expired.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Mr. Hyde, you're recognized.

Mr. HYDE. Thank you, Mr. Chairman. I've heard from previous witnesses nobody connected with this event made a written statement. That kind of surprised me, because I thought when shooting is involved and people are killed, everybody who participated in it would file a report. That's the bane of law enforcement, filing report, the paperwork.

Is this unusual, that nobody filed a written statement or made a written statement?

Mr. NOBLE. What happened, Mr. Chairman, is that ATF began what was called a post-shooting review. And at the time they began the post-shooting review, two things happened. A U.S. attorney who was handling the murder investigation had turned over that investigation to the Texas Rangers, and there were reports in the press that ATF management was trying to prevent the truth from being told, that ATF went forward with a raid knowing full well in advance that Koresh was expecting them. And for that reason, and the reason that the U.S. attorney was conducting a murder investigation through the Texas Rangers, what would have been an ordinary practice and a common practice did not occur.

Mr. HYDE. Well, in other words, winning the case became more important than really getting at the facts. Because it was the Department of Justice, it doesn't say—it doesn't say the Texas Rangers, doesn't say the—it says the Department of Justice does not want Treasury to conduct any interviews or to have discussions with any of the participants who may be potential witnesses.

The prosecutors don't want us to generate additional Jencks, Brady or Giglio material. In other words, exculpatory material that might prove one of these 11 who were locked up, one at least for a year, might help them prove their innocence. So let's not discover anything, let's not take statements, even though it would be helpful in this comprehensive review of what happened and what went wrong, but for God sake, we can't help prove anybody's innocent.

I mean that's really what we're talking about. I'm not very proud of that. Are you, Mr. Noble?

Mr. NOBLE. If those were the facts, I would be not proud of it. But the facts are that the fact gathering was done by the Texas Rangers almost immediately after the event, a disinterested law enforcement agency. And the fact is that we avoided line agents continuing to feel as though ATF management was trying to get them to change the story about the truth of what happened near Waco on February 28, 1993.

Mr. HYDE. But you refused to take statements from people who were involved. I should think that's the first thing, you'd want to know what happened, let the chips fall where they may. But—

Mr. NOBLE. I wouldn't want to have statements taken by people who are accused of trying to orchestrate a coverup. That is not the way to conduct an investigation.

Mr. HYDE. Well, then send somebody else out to take—

Mr. NOBLE. That's why the Texas Rangers conducted the fact-finding.

Mr. HYDE. Well, then is it true or not, because this is a memo to you, preliminary investigation plan from Robert M. McNamara, Assistant GC, Enforcement, dated 14 April 1993, "DOJ does not want Treasury to conduct any interviews or have discussions with any of the participants."

Now how—DOJ does not want us to make any findings or draw any conclusions from what we review. I mean—

Mr. NOBLE. What document are you referring to, sir?

Mr. HYDE. Either you wanted to win the case and were willing to compromise truth, or you wanted to find out what happened.

You want to know the document? I'm sorry.

Mr. NOBLE. Please, please.

Mr. HYDE. Do we have somebody who can take this to the witness?

Mr. MAGAW. Congressman, while that is being done, let me just mention to you that since I came to ATF we created that inspection unit, that oversight unit, and now they do review every shooting.

Mr. HYDE. Were there shooting reviews when you were in the Secret Service, sir? Did you require your agents to file a shooting review?

Mr. MAGAW. That's right. And when the special—

Mr. HYDE. Even if it might cost you winning a lawsuit?

Mr. MAGAW. That's correct.

Mr. HYDE. That's the right way to do it. May I ask you, Mr. Magaw, have you instructed your people now to leave the press at home next time they go on a raid?

Mr. MAGAW. Well, we've—we certainly have talked about the press and we want to make sure that if the press are going to be there—sometimes they find out about other—about these circumstances from other places. And so we want to make sure that if—if they are there, and are going to be there, that they're properly handled in a safe spot and those kinds of things. But as far as us advertising, trying to reach out to the press, trying to give them early warning, none of that is to be done.

Mr. HYDE. Good. Mr. Noble.

Mr. NOBLE. May I follow up, please?

Mr. HYDE. Yes, please.

Mr. NOBLE. With all due respect, Mr. Chairman, I believe that there's a blurring of time frames that's occurring here. This memo is dated on April 14, 1993. It's not talking about the fact gathering that occurred in early March 1993 with regard to the post-shooting review.

What it's talking about is the methodology that would be used for conducting the Treasury Department's independent review. So there are two separate issues that are going on here. This memo is talking forward in terms of how we were going to generate this document. Not looking backwards in terms of how the Texas Rangers had already gathered information.

Mr. HYDE. That makes me feel even less comfortable, because that says DOJ doesn't want you to take any statements, doesn't want you to reach any conclusions. I thought—I thought my Government would want to find out what happened and who's at fault and who isn't. Instead, it's willing to keep people in the dark, especially if they're defense counsel, to win a lawsuit. That's what that English means to me.

Mr. NOBLE. Mr. Chairman, with all due respect, I think that is an unfair characterization of what was at issue here. You have two Departments with separate and independent interests. One Department is concerned about gathering information for purposes of preparing a prosecution, and another Department is concerned about gathering information, not to use in that prosecution, but for purposes of dealing with administrative matters. And all this memo said to me was that the Department of Justice wanted to make sure that one investigation didn't undermine the other investigation.

Mr. HYDE. No, that isn't what it says. It says don't produce and don't take any statements from witnesses. That's what it says.

Mr. NOBLE. I'm telling you, with all due respect, that I worked at the Department of Justice, I know the people who were at the Department of Justice, and one of the reasons why you don't want two statements taken from the same witness by two different individuals is because in court, just like is happening in this hearing, someone will take one statement and inadvertently or innocently read into it something that perhaps that author didn't intend. And that's why you don't want multiple statements generated in a case. Purely innocent reasons, sir.

Mr. HYDE. OK. I know my time is up. I just want to make one very quick statement. It's very unusual that nobody connected with this debacle made a written statement. I think that classifies as a unique event in the history of law enforcement.

Mr. MCCOLLUM. Mr. Taylor, you're recognized for 5 minutes.

Mr. TAYLOR. Can we wait until after the buzzer?

Mr. MCCOLLUM. We won't run the clock until after the buzzer.

Mr. SCOTT. Mr. Chairman, while he's waiting, had Mr. Noble seen that before?

Mr. MCCOLLUM. I don't know whether he had or not. I presume it's the staff, somebody had. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman. Let me begin with an observation.

One of the people that I have the most respect for in this whole chamber is Henry Hyde. One of the guys I like the most in this whole chamber is Henry Hyde. But it does strike me as a bit ironic that just last week my friend Henry Hyde voted not to subpoena the people who wrote the Sinful Messiah articles and left town for fear for their lives and is jumping Mr. Noble's case because they didn't seek witnesses.

Mr. HYDE. Sir, I'll sign a subpoena for anybody in America you want.

Mr. TAYLOR. Thank you, sir.

Mr. CONYERS. You will?

Mr. HYDE. Not you, John.

Mr. TAYLOR. OK. If you give me about five more votes, Mr. Hyde, we'll be—

Mr. HYDE. Yours I'll take under advisement.

Mr. CONYERS. Finally. How about the NRA subpoenas?

Mr. HYDE. Well, when we get over this hearing, let's talk about it.

Mr. CONYERS. OK, fine, thank you.

Mr. TAYLOR. Time's running, so, Mr. Noble, let's go back to the—everything. Let's start from the beginning. Why was the ATF—I'm going to give you a series of questions, because I have limited time. Let's refresh the American people's memory why the ATF was there in the first place.

When it was all said and done, was it found that after you had the raid that David Koresh possessed a large number of illegal firearms? I happen to own a semiautomatic weapon that Mr. Schumer calls an assault weapon. I don't think it is. He thinks it is and I voted against his bill. But we're talking about real assault weapons here, real fully automatic weapons.

Mr. NOBLE. I believe the conservative estimate by the FBI agent was 38 machineguns and multiple grenades.

Mr. TAYLOR. Third question is, it's been asked over and over, did your review show that any shots were fired from the three helicopters on loan from the Texas National Guard?

Mr. NOBLE. Absolutely, unequivocally not.

Mr. TAYLOR. Nowhere along the line?

Mr. NOBLE. Nowhere along the line.

Mr. TAYLOR. Was Mr. Koresh being looked into because he happened to be a religious man or because there was talk of child abuse, because there was talk of illegal weapons, because there was talk of a hit list being compiled by him against former members who were talking to the police and to the press, because he was holding people against their will in the case of one woman for at least 3 months? Or did the ATF literally throw a dart at the map of the United States of America and say let's go find a country preacher somewhere to go harass?

Mr. NOBLE. He was being investigated because he was believed to be amassing an arsenal of machineguns and grenades in violation of Federal criminal law, over which ATF has jurisdiction.

Mr. TAYLOR. Mr. Noble, in the review of all of this, because we're seeing a lot of nitpicking out there, and maybe that's how some people enjoy spending their time, have you seen anything illegal, have you seen anything immoral, and as a matter of fact, have you seen anything at all—I'm going to open this to Mr. Magaw as well—that would justify the death of 4 ATF agents, the wounding of 20 more, by David Koresh and his followers when they ambushed the ATF?

Do you see anything at all that justifies the murder of these ATF agents or the shooting of those 20 others?

Mr. NOBLE. Nothing that I could conceive of justifies David Koresh's ordering his followers to lie in wait with machineguns and handgrenades in order to murder and wound ATF agents.

Mr. TAYLOR. Mr. Noble, I'm going to ask one last question.

It is, the question is now being turned around, should we have had these hearings. I'm personally glad we had the hearings. I

think considering that we're spending \$1 million every 2 minutes on the interest on the national debt, the Nation's got \$150 billion a year trade deficit, that there's certainly other big fish out there that we need to go after.

But four good men did die. Twenty more good men were wounded. But hasn't it given the ATF an opportunity to talk about, in some instances, some things that need to be said, and also in fairness to those four agents who died, don't you think it would make sense to subpoena the two reporters who left town after writing the series for fear for their lives, and then——

Mr. NOBLE. You had me nodding until you got me involved in the subpoena question.

Mr. TAYLOR. OK. Don't you think it would be fair to have the woman who said she was held for 3 months against her will, and the woman who says Koresh was compiling a hit list? I mean, my goodness, we're talking about the deaths of four good people, one of whom volunteered to serve in Desert Storm.

Mr. NOBLE. I respectfully would like to answer the first part of your question with regard to the importance of these hearings. I think they have been important because they reflect that a department of this Government and the executive branch, consisting of these brave and fine career law enforcement officials, can take an honest, hard look at itself, and report back what is painful to many, comprehensively and candidly, and I think that will help to restore confidence of the American people in those of us who occupy positions of trust.

Mr. MAGAW. What you have also done, sir, is that you have brought the attention of every law enforcement officer in this country, however small or however large their departments are, to look at their procedures, look at their operations, look at how they're doing business, and how they're planning. And ATF is trying to be helpful with that, as painful as it is, for us to share the examples learned and the mistakes made.

We are doing that at the request of police departments all over the country, and most of you have seen and heard from Mr. Buford and he is doing a lot of that as he travels around the country. It's good for him therapy-wise, and it's very good for these departments. And we will continue to do that.

Mr. TAYLOR. Thank you, sir. Reclaiming my time, Mr. Chairman, although I was not sworn in like the other witnesses, the nice things I said about Henry Hyde, I really mean.

Mr. MCCOLLUM. That's fair enough. You don't have to say that under oath, Mr. Taylor, we believe you. At this time, I yield 5 minutes to Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr. Chairman.

Before yielding my time, I just would like to comment that I think we're all here trying to establish a record that will restore confidence in law enforcement in this country. But I would also say that I think one of the purposes that is we don't want to in any way downplay what went on that day in Waco.

I don't think we want to—I wouldn't use the word "coverup," but certainly the idea that if there's any effort here to try to obfuscate or make it appear that mistakes were not as serious and horrendous as they were, would not be a good service to it. At this point

I'd like to yield 2½ minutes of my time to the gentleman from New Hampshire and 2½ minutes to the gentleman from Florida, Mr. McCollum.

Mr. ZELIFF. Mr. Noble, I believe there was a first attempt during the initial ATF raid by the Justice Department to elevate the criminal cases above getting at the truth and to cover up evidence that may have led to the innocence of particular individuals such as Mr. Evans' client.

Now, isn't it true that during your review you had to operate in a constant atmosphere created by the Justice Department and particularly by Mr. Webb Hubbell that the Treasury review not produce any information that would hurt the all-important criminal cases?

Mr. NOBLE. That is 100 percent false. There was no effort made by the Justice Department to cover anything up. Within days of the raid, the Texas Rangers had taken 85 written statements of ATF agents and others involved in the raid. As I said before, I will continue to say, I have the utmost respect for those prosecutors at the Justice Department. I think they do a very, very important job and they do it quite well.

Mr. ZELIFF. I'd like the clerk to pass out document marked No. 6. Direct your attention to the last paragraph on the first page, and I quote, "I'm raising this with you again today because of this morning's meeting with Justice, we heard that Webb Hubbell, Associate Attorney General designee, is so concerned about the potential impact of our review on the criminal case that he planned to raise it directly with the President."

Mr. Noble, I've already given you a major example of possible obstruction of justice in the conflicting affidavits by ATF agents related to the prosecution of Mr. Allison. Is this the kind of thing that the Justice Department and particularly Mr. Hubbell did not want covered in the Treasury review that might hurt the criminal cases?

[The information follows:]



DEPARTMENT OF THE TREASURY  
WASHINGTON

To: Jack DeVore  
From: Ron Noble *Ron Noble*  
Re: Waco-related Events  
Date: April 9, 1993

This morning we met with the Deputy Assistant Attorney General in the Justice Department who is heading up their Waco prosecution team. Justice wants to coordinate very closely with us to be sure that the Treasury review does not interfere with the stand-off negotiations and criminal prosecution of the Waco defendants. Justice's worry is that any official government statement which criticizes ATF will be used by the defense in charging that fault lies with the government, and not Koresh. In addition, Justice is concerned about the potential impact any press release might have on negotiations.

With my federal law enforcement background, I understand the concerns of Justice. On the other hand I understand the importance of not editing a press statement which already has been approved by the Secretary. Your original press release was prepared for issuance after the stand-off concludes. The current statement containing the Department of Justice's comments, might be released prior to the stand-off's conclusion. Therefore, in my view, the Justice negotiators have an important interest in knowing what Treasury plans to say. The position of the FBI negotiators and the Waco prosecutors was personally verified by Bob McNamara (Assistant General Counsel) who went to Waco this week at my request to meet with them. He assures me that these are substantive concerns. If they approve, then they cannot later complain if anything goes wrong following the release of Treasury's statement.

My goal in writing you is to discharge my duty as a messenger, colleague and advisor. Jean Hanson asked me to convey her concern that we incorporate some, if not all, of Justice's changes. I also believe that establishing a good working relationship with Justice is important to the success of our independent review. Justice has demonstrated good faith by including Treasury in all meetings and agreeing to work with us should a Treasury review be approved.

You are the Assistant Secretary (Designate) for Public Affairs); if in your judgment, you believe Justice's proposed amendments to Treasury's press release are unjustified or unnecessary, I believe that is your call. I am raising this with you again today, because at this morning's meeting with Justice, we heard that Web Hubbell, Associate Attorney General

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(Designate), is so concerned about the potential impact of our review on the criminal case that he planned to raise it directly with the President. I simply wanted you to be informed that, if we don't throw some "bone" to the Justice Department on the wording of the Press Release, this may exacerbate Hubbell's concerns. Hubbell will use our refusal to agree on a press statement as exhibit 1 to support his view that a criminal investigation and our review cannot occur simultaneously.

I'm attaching their version and our version. Is there any language of theirs that you would be comfortable adopting? If so, please let me know, and I'll inform Justice. While I am sure that you've spent more time than you should have had to on this issue, I believe that the potential impact such a statement might have on negotiations is worthy of discussion. Please give me a call, if you wish. I'd be happy to stop by to see you.

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Mr. NOBLE. Absolutely not. The Treasury Department conducted over 500 interviews of people who have knowledge with regard to their—the occurrences near Waco and leading up to Waco and February 28, 1993. There was no—no intention by anyone in the Justice Department or any other department to do anything other than make sure that we allow the criminal process to run its course in the criminal case, and also let's make sure that the Treasury Department and the Justice Department don't collide as they conduct reviews with different objectives.

Mr. ZELIFF. So you feel that's what Hubbell was talking about?

Mr. NOBLE. I served as Chief of Staff and Deputy Assistant Attorney General in the Criminal Division in the Justice Department under President Bush. And I know that if I were in that position, I would have had the same concern as any prosecutor who was involved in overseeing prosecutions or investigations.

Mr. ZELIFF. I yield to the chairman.

Mr. MCCOLLUM. I thank you very much on the remainder of Mr. Clinger's time and for his yielding.

I want to ask you, Mr. Noble, about comments you made on the "60 Minutes" program on May 14 of this year, what you were asked about the Branch Davidians, and your answer in describing them. You said, "this was not a religious group. This was a group of criminals engaged in serious violations of Federal criminal laws."

You did not mean by that answer to suggest that the many women and children who were part of that Branch Davidian group were criminals in violation of serious Federal laws, did you?

Mr. NOBLE. I meant exactly what I said, that though they might call it religion, there is no protection for any group that attempts or in fact does manufacture machineguns and grenades in this country in violation of Federal criminal law.

Mr. MCCOLLUM. But do you mean that the children and the women were engaged in that manufacture?

Mr. NOBLE. I don't believe I said the women and children, but I will tell you, sir—

Mr. MCCOLLUM. You did say.

Mr. NOBLE. May I finish?

Mr. MCCOLLUM. Sure.

Mr. NOBLE. But I will tell you that we did uncover one woman who used a firearm. We have female agents that go out every day. So the fact that they're women doesn't mean that I don't believe that they pose a potential threat to law enforcement officers.

Mr. MCCOLLUM. Well, I don't think you believe nor do I believe that Kiri Jewell was a threat. I don't think the children were. And my only point in making it isn't that there wasn't a problem there; there was clearly. It is just that you made a very broad, sweeping statement that, in my judgment, overencompassed the people in that compound some of whom were very innocent of criminal violations.

Let me ask you one last question.

Mr. NOBLE. I would simply say, Mr. Chairman, that's what made David Koresh so dangerous is that he would use children like Kiri Jewell or other children in order to protect himself from law enforcement officers executing lawful search warrant and arrest warrants. Those are the most dangerous criminals.

Mr. MCCOLLUM. It may be that Mr. Koresh was a dangerous criminal.

Mr. NOBLE. He and his followers were. Mr. Koresh wasn't the only person—

Mr. MCCOLLUM. The fact remains, all the women and children there were not dangerous criminals. And I'm sure you don't disagree with that when you reflect on it.

Let me ask you one question in the time remaining. Were you aware before today—or I shouldn't say before today, before these hearings, that Ms. Sparks, the Child Protective Service representative who testified before us last week from Waco, that she advised ATF against, the raid. She had testified that she advised them that David Koresh, in her judgment, should have been taken outside the compound rather than having an entry. She was afraid that if he were not taken outside that there would be a calamity and if he were taken outside, because of her long association with this, he would probably be cut off and the group would not commit suicide because of the nature of the religious group, and the nature of their belief in him as a messiah and the nature of the belief that on the key day that was to arrive in Armageddon that they would all have to go up in flames together? Were you aware of that before these hearings?

Mr. NOBLE. I believe the most—I believe I have it right. I believe that Joyce Sparks was the person who reported that David Koresh had said on April 30—I might have the date wrong, April 30, 1992, in any event, the day following the L.A. riots, that when he revealed himself the L.A. riots would pale in comparison. The detail that you went through just now, sir, I don't have a very clear recollection right now but I'll think about it throughout this hearing.

Mr. MCCOLLUM. Thank you. That was my point. I didn't think it was, it wasn't in the report.

In any event, Ms. Lofgren, you have 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

Let me give 10 seconds to Mr. Scott who has a quick question.

Mr. SCOTT. Thank you, Mr. Noble.

You were responding to the gentleman from Illinois about getting involved in the investigation and mentioned specifically now developing Brady material, it looked like that was the first time you are seeing that. I'd like you to review that and get a little background on it and then report back to the committee of what your reaction is after you've had an opportunity to review it.

Mr. NOBLE. I will do that.

Mr. SCOTT. Thank you.

Yield back.

Ms. LOFGREN. Thank you.

I do have some questions, but there has been a lot of discussion and questioning about religion and cults and who broke the law and who didn't, and I think the first amendment allows people to believe whatever they want, and that's important. It made this country great. But when those beliefs lead you to do things that violate the criminal law, then that's where there becomes a problem.

And you can believe that it's good for 11-year-old girls to be raped and that's not against the law to believe that. But when you

rape those 11-year-olds, then it is. And I just think it's important to say that. And I would add further that any parent—and I would include mothers as well as fathers—who give up their 12-year-old daughters to become rape victims to their messiah, not only has done something I think very wrong, but has also committed a crime.

Having said that, I'm very interested, Mr. Magaw, about your recommendations on page 9 of your testimony. There were a lot of things wrong and some things right in this whole investigation.

We had agent Aguilera and Rodriguez who had developed lots of information, but they were trained as police officers and from what I can see of them, they're tough guys and took their work seriously and worked hard at it, but they weren't trained to really understand the cult nature of what they were dealing with and they weren't investigating it because it was a cult but because of the violations of the firearms laws.

We had information dribbling in from Ms. Sparks, the CPS worker, former cult members who had left, the DA's office I guess had information. What I'm wondering is how are we going to organize ourselves in the future to assimilate this information and be able to evaluate it with some expertise.

People have mentioned that Ms. Sparks had the opinion that if Koresh had been arrested off site that would have been the end of it. Agent Rodriguez reached a contrary conclusion.

I think both individuals cared about their job, worked hard and knew a lot, but neither one of them was really trained to sort through that. How are we developing a structure so that that information can actually get to people who have access to expertise to evaluate it from a nonlaw enforcement point of view?

Mr. MAGAW. Prior to the Waco investigation, ATF did not have an intelligence division or intelligence unit that reached out throughout the field. Now, when I talk intelligence, I don't mean intelligence like the CIA or the Secret Service would have in terms of trying to judge the risk of the present. What I'm talking about is operational intelligence.

First of all, we should have identified now we have evidence that's working on a cult, so that intelligence unit now, it's their responsibility to go out and find the experts in the field and to bring them forward to give us all the advice that they can. And so now within each one of our divisions is a—is a person who is responsible for operational and functional intelligence as it applies only to ATF functions. If we receive intelligence that involves another bureau, then we would pass it to them.

Ms. LOFGREN. Let me ask you another question along that line. Just reading through the report and listening to these days of testimony, there were State law violations, there was child abuse, really that seems criminal. There was rape going on within the compound. There was kidnapping. There was kidnapping across State lines of a child for the purpose of sexual abuse. There were arms violations and there were at least some allegation of drug violations.

Noting that you would have State violations, FBI jurisdiction as well as ATF, is there a way to do a collaborative effort? Would

there require a change in Federal law or for that matter State laws to have a team approach to go after all the violations?

I know the focus of this whole thing for ATF was arms which is proper and that's your jurisdiction. But it has occurred to me as I listen that we might have been better off had we had the opportunity to have a consortium of law enforcement officials with various jurisdictions to go after the whole ball of wax. Do you have an opinion on that?

Mr. MAGAW. That's a very valid idea. It's one that we work with every day in terms of task forces. Whenever you see ATF function, it will almost never be alone. It will be with State and county and city police officers working. And so that we do trade information and we do keep it together.

Many times when we arrest somebody on a gun violation, a lot of times it will go to State court, it will go to the State system as opposed to Federal. So we do—and that's one of the functions of this intelligence unit and the task force is to make sure all of that kind of information is not only coordinated on a local level but wherever else it might apply throughout the country.

We just finished a very large gun-trafficking case which took a lot of intelligence work, it came out of the south and went all the way across the country to California and north up to New York. So that kind of thing is really taking place now because—not that they didn't know to do it before, they just didn't have the vehicle to do it. Now they have the vehicle and they also have the training and are getting more and more as we go along.

Mr. MCCOLLUM. Ms. Lofgren, your time has expired.

I yield 5 minutes to Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

Mr. Noble, Mr. Black testified today that no one outside of ATF had been involved in the rehiring of Sarabyn and Chojnacki. The Legal Times has suggested that you were involved to some extent in that decision. Were you involved in that rehiring decision? And if so, why? Or were you not. If not, why not?

Mr. NOBLE. I was not involved in the—I'm trying to—can I just answer? I don't know if I can do—

Mr. MAGAW. I probably should answer that.

Mr. NOBLE. Let me try and tell you what my involvement was.

Mr. CHABOT. Sure.

Mr. NOBLE. I wanted to make sure that whatever happened to Mr. Chojnacki and Mr. Sarabyn was within a range of discretion that I would accept from a Bureau Director. So, for example, if no action were taken against Mr. Chojnacki and Sarabyn, I would think that that would be inappropriate. So I was kept informed of what was going on, and I think for that reason I would say I was involved. But in terms of the decisionmaking process, Director Magaw set up a decisionmaking process. Perhaps he should answer that.

Mr. CHABOT. So you didn't make the decision but you knew what was going on, you were aware of the—

Mr. NOBLE. Toward the end, at some point—at some point, sir, I became aware of what was going on, that's correct.

Mr. CHABOT. Thank you.

I believe Mr. Black this morning said that there wasn't anybody involved at that level.

Mr. NOBLE. I'm—I'm being generous in saying knowing is being involved. Maybe Mr. Black thinks I wasn't involved because I didn't interfere.

Mr. CHABOT. Did you talk to other administration people about it?

Mr. NOBLE. No.

Mr. CHABOT. The rehiring?

Mr. NOBLE. No. I talked to my staff about it.

Mr. CHABOT. OK, you talked to your staff about it.

Mr. NOBLE. Right.

Mr. CHABOT. Also, you were directly involved in the decision to permit the raid to go forward; is that correct?

Mr. NOBLE. Again, I—I want to answer all these questions about my role as though if I were the Assistant Secretary for Enforcement, what I would have done. I don't want to nitpick about whether I was a consultant or not a consultant. But I gave advice that was followed that led to the raid going forward. That I accept responsibility for. Whether I—whether it was de jure or de facto, I am not drawing a distinction between that.

Mr. CHABOT. You were notified of the plan on February 26, which was 2 days prior to the raid, and you knew about it at that point; is that right?

Mr. NOBLE. That's 100 percent correct.

Mr. CHABOT. And after concerns were expressed about the wisdom of such a massive undertaking, you and Mr. Simpson spoke with Mr. Higgins and he told you that the raid would not go forward if things did not look right; is that correct?

Mr. NOBLE. After Mr. Simpson and others and I discussed the situation, reviewed the memo, Mr. Simpson called Mr. Higgins and told Mr. Higgins that he would not authorize the raid to proceed. Thereafter, as I tried to say earlier, Mr. Higgins called back with additional information on Friday and again on Saturday and the raid was permitted to proceed, that's correct, sir.

Mr. CHABOT. OK.

Well, this is my question. Given that you were one of the very few top people at the Treasury Department to have been involved in the process of signing off on the raid, wouldn't it have been better for someone who hadn't been as involved in the underlying controversy to conduct this particular report, somebody who would have been more independent than yourself?

Mr. NOBLE. I believe the report speaks for itself. It is comprehensive. It is candid. It is thorough. It has been reviewed by three independent reviewers.

Mr. CHABOT. I understand that, but that doesn't answer my question.

Mr. NOBLE. May I finish, please, sir. You have asked me a question, may I please finish.

Three independent reviewers—

Mr. CHABOT. I didn't ask you that question. What I asked—

Mr. NOBLE. Yes; you did. You said wouldn't it have been better for someone other than me to have generated this report. I'm explaining to you why it would not have been better.

Mr. CHABOT. So your answer is no.

Mr. NOBLE. My answer is that the independent reviewers, the inspector general and others who have looked at this report say that it is a comprehensive, candid and thorough account of what has happened, and I have not heard anyone point to any part of this report other than the words "70 percent" and say what is wrong and what is not accurate.

Mr. CHABOT. OK.

Also, Mr. Noble, your report fails to cover one critical aspect of the disastrous decision to go forward with the raid even though the element of surprise was known to be lost, and that's who in Washington knew that the raid was suddenly being moved up in time. The report doesn't deal with that at all. Do you know if anybody in Washington knew that the raid time—that the raid was being moved up?

Mr. NOBLE. Are you saying moved up—

Mr. CHABOT. Not the report but the raid.

Mr. NOBLE. From March 1 to February 28?

Mr. CHABOT. No, in time, from what was supposed to be 10 in the morning, then it got moved up apparently once the element of surprise apparently had been lost.

Mr. NOBLE. It's my understanding that no one was told at ATF, and I know no one was told at main Treasury that Robert Rodriguez had come out of the compound and told various supervisors that Koresh knew ATF and, quote, the National Guard, unquote, were coming. So I'm not sure I understand your question, sir.

Mr. CHABOT. Let me follow up with one final question because I'm almost out of time here. Your report had some very harsh words for some of the line commanders that were actually out in the field, but it seems to have almost no criticism at all for top Treasury officials who allowed a very poorly planned raid to go forward on the basis of very little information.

We've been told that the Secretary of the Treasury had never met the Director of the ATF prior to the raid, that those high up in Treasury who had doubts about the wisdom of the raid let it go forward without ever even asking to see a tactical raid plan, and that in fact there was no contingency planning. Isn't it true, notwithstanding your report, that some of the blame for the Government's mistakes lies with Treasury officials and not just with the ATF folks that were involved?

Mr. NOBLE. The Treasury report makes it very clear that responsibility for the raid lies with the Treasury Department, ATF, ATF senior managers, ATF raid commanders. The Treasury report makes it absolutely clear that if Treasury's directive had been followed, the raid would not have gone forward. So I would submit to you, sir, and anyone else who thinks about this honestly, that you ought to look at what the career Treasury officials did on February 26, the day the World Trade Center bombing occurred, and I would say they acted properly and honorably.

And I would just like someone to tell me what should have happened, what else should have happened, what else these two individuals could have done but tell Steve Higgins they had concerns, stop the raid, and once their reason for concern evaporated, to let

it go forward and trust that the raid commanders would know that a raid premised on surprise ought not to go forward once 45 minutes elapsed, sir.

Thank you.

Mr. CHABOT. That's the purpose of today's hearings, to try to find out those answers to those questions and to make sure this never happens again.

Mr. MCCOLLUM. Mr. Chabot, your time has expired.

We now have a series of rollcall votes in progress on the floor. I think there are four of them. We're are going to take a recess until 5 minutes after the conclusion of the last of this series of votes.

The subcommittees are in recess.

[Recess.]

Mr. MCCOLLUM. These joint hearings of the two subcommittees on Waco will come to order.

When we recessed it was the time for Ms. Slaughter to have her 5 minutes and I give you the 5 minutes that you now have, Ms. Slaughter.

Ms. SLAUGHTER. Thank you, Mr. Chairman.

I want to say for the record that I have learned something new at these hearings. It has been reinforced over and over until the new administration came in. Under Secretary Bentsen you made an enormous amount of changes in the way the ATF will work and the reporting system that it's going to have, and I thank you for it. I think we'll all be better for it.

Numbers of things that we've heard have been troubling, and one thing that I want to say is I don't need to be reinforced in my admiration for law enforcement. As I said the other day, it still amazes me that no matter how that thing was planned or whether it was a botch or not, those men were willing to walk up to that door and get killed.

Robert Rodriguez' pain was apparent to me sitting here in this chair. As far as Ms. Sparks was concerned, I spent a good deal of time talking with her. My recollection of her testimony was that she had been asked by the FBI, I believe, to be prepared to go in and take—have clothing for children in case of the use of CS gas.

My—that's the only comment I recall that she had with any of the authorities, and they told her not to worry about it. Indeed the weekend of the raid she was away. She was out of town, she said, and when she saw the ladders go up against the House she thought the children would be killed.

She and I discussed at some length Mr. Koresh. She seemed to have much more faith in him than I did, that he would go to jail quietly and then his followers would just give up. I didn't think that followed any of his preachings. She had said she only had three contacts, I believe, with him on the compound.

But one of the things that I do want to talk about is the new regulations. I think that's terribly important. I hope I'm not stretching it to say the reason those people died and the others were shot was because it was tipped off. It was tipped off because a television man told a postman, and the television man was told by a woman who worked for the ambulance company, that the ATF had hired three ambulances from them. Then, the district director, Mr.



Royster, I believe his name was, had given directions to his PR person that he wanted a single person notified that something wonderful was going to happen, or might happen. This was to be done on Friday evening, to notify that he wanted this one person called when it happened.

It does make me question whether or not Mr. Royster and you may be able to answer this for me, Mr. Royster had talked it over with the man and said, you know, something really big is going to happen in Waco, and when it does, I'll tell you first.

Another point that keeps sticking in my mind here is the newspaper articles. Everybody was afraid of what was going to come out in those articles and it makes me question again, had somebody talked to the reporters about what was going to be going on.

So whatever you do to change those regulations, it seems to me, Mr. Magaw, one of the most important things that you can do is get some control over what I think I would call loose lips. I'm surprised that your regional director thought that one of the most important things he was doing on Friday was making sure that the proper person would be notified at a television station.

Would you give me your views on what you've done to change what to me—and do you agree with me that the absolute fact is that those people were killed because that raid was tipped and it was tipped because people talked?

Mr. MAGAW. If it wasn't tipped in the way it was, it should have been tipped in 15 or 20 other ways.

Ms. SLAUGHTER. Too much talking.

Mr. MAGAW. This organization, ATF, one of the first things I realized, that they never really did not pay much attention to operational security and they didn't think about it. It's not that they didn't want to do it, they didn't think about operational security. So we have now a person on assignment from an organization that does very well in operational security and they are going to spend 6 months with us.

I have a new person that I have just assigned to that and it will be that person's full-time responsibility to oversee operational security for this entire Bureau. One of the first things we have to do, we're in the process of doing now, is sensitize the individuals, cause the individuals to think about it from what piece of paper they throw in the waste baskets as opposed to the burn bag, and what they say to who, and even in a restaurant or other places, about operational security. Only as it applies to ATF. We're not getting into any other business in terms of operational security.

Ms. SLAUGHTER. In the case of Mr. Rodriguez, it wasn't clear to me, maybe you can answer this as well, he was going to be sent into the compound on Saturday and Sunday. What method of escape was he to have on Sunday if the raid happened?

Mr. NOBLE. That's probably one of the most frightening aspects of the review. Mr. Rodriguez was sent in on Saturday and again on Sunday despite his being worried about the unnecessary attention that would draw to him and despite his being concerned about his safety. Each time he went into the compound, he went in at risk of serious bodily injury or death to himself. So there was really no plan for him except as he stated and it's reported in our review, what he thought about was jumping out of the window and just

running for his life when David Koresh first came back into the room.

Ms. SLAUGHTER. That's dreadful.

Do you have any reason to believe, Mr. Noble, from Ms. Sparks, is there any difference in what I had said, that her conversation was really with the FBI and not with ATF at all?

Mr. NOBLE. I don't have the specific recollection, so I would defer to you, ma'am.

Ms. SLAUGHTER. Thank you very much. I see my time is just about up. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Ms. Slaughter.

Next, Mr. Mica, you're given 5 minutes.

Mr. MICA. Thank you, Mr. Chairman.

Mr. Noble, welcome. You're the one that produced this document, I guess, and I——

Mr. NOBLE. I will take responsibility for whatever is wrong in it, but I will give credit for whatever is right to the people sitting behind me.

Mr. MICA. What is interesting, on page 7 is an overview, and I said this before, but the investigation found disturbing evidence of flawed decisionmaking, inadequate intelligence gathering, miscommunication, supervisory failures and deliberately misleading postraid statements about the raid and the raid plan by certain ATF supervisors. Do you concur with that conclusion?

Mr. NOBLE. I do, sir.

Mr. MICA. Mr. Noble, you agreed with those accusations just now but you said earlier that you didn't participate in the rehiring—directly involved in the settlement process for rehiring Mr. Sarabyn and Mr. Chojnacki; is that correct?

Mr. NOBLE. That's correct. The role I played was to make sure that whatever decision was made with regard to Mr. Chojnacki and Mr. Sarabyn was consistent with what would be——

Mr. MICA. You also said you——

Mr. NOBLE. May I finish please, sir.

Mr. MICA. Well, I don't have much time.

Mr. NOBLE. Fine.

Mr. MICA. But you also, just a clarification, you also never acted, said you never acted as a negotiator and spoke primarily to staff or only to staff, I think those were the words, and you never called anyone outside to discuss the settlement negotiations; is that correct?

Mr. NOBLE. That is not the way I recall what I said, sir.

Mr. MICA. Well, you again said that this is the basis on which these people were fired and yet——

Mr. NOBLE. What is the basis, sir.

Mr. MICA. This, your report and what I read.

Mr. NOBLE. I never said that. I never said that, sir.

Mr. MICA. So what was the basis on which they were fired, Mr. Sarabyn?

Mr. NOBLE. This report.

Mr. MICA. Well.

Mr. NOBLE. This report stands on the following and this is what this report was supposed to find. On page——

Mr. MICA. I don't want to get into that.

Mr. NOBLE. On page 182.

Mr. MICA. Are the reasons for firing on page 182?

Mr. NOBLE. On page 182 are the concerns that this report articulated, which I would like permission to finish, please, sir.

Mr. MICA. No, sir.

Mr. NOBLE. If you don't want me to answer questions, that's fine.

Mr. MICA. You reference, I'll look that up and the other Members can, but I've got some other questions that I need to get into. I understand that you said you did not directly participate in the negotiations to rehire Sarabyn.

Mr. NOBLE. The negotiations.

Mr. MICA. Sarabyn and Chojnacki.

Mr. NOBLE. The negotiations concerning—

Mr. MICA. Yes; the rehiring decisions, when Mr. Chabot asked you those questions.

Mr. NOBLE. The negotiations concerning the hiring of Mr. Sarabyn and Mr. Chojnacki?

Mr. MICA. Rehiring. Rehiring.

Mr. NOBLE. Yes, sir. Thank you.

Mr. MICA. Is that correct, you did not?

Mr. NOBLE. I'm trying to answer the question and each time I try, I'm interrupted.

Mr. MICA. Did you participate as a negotiator in the rehiring settlement with Mr. Chojnacki and Mr. Sarabyn?

Mr. NOBLE. Mr. Chojnacki and Mr. Sarabyn had lawyers who consulted and negotiated with lawyers from the Treasury Department's General Counsel's Office assigned to ATF.

Mr. MICA. You did not participate in the negotiations.

Mr. NOBLE. The negotiations were between the lawyers, that's correct.

Mr. MICA. Well, I received a letter from the sister of Mr. Sarabyn who said that in fact I talked to Mr. Noble on November 8. He discussed the possibility of an MSPB settlement. We had a second conversation. During the second conversation, he discussed the MSPB settlement. During this conversation, he said, I can tell Chuck and his attorney about the conversation. I did so.

It is my understanding that Chuck then told Mr. Gardner, his attorney, who immediately contacted Mr. Lopez, the Treasury attorney. Were you negotiating with the sister of Mr. Sarabyn on the settlement?

Mr. NOBLE. Sir, Mr. Sarabyn's sister called me because a retired ATF agent called her and said that I sounded like a reasonable person to speak to. After the agent had left a message saying—

Mr. MICA. Did you speak with her on three occasions, sir?

Mr. NOBLE. Sir, with all due respect—

Mr. MICA. Did you speak with her on three occasions?

Mr. NOBLE. Sir, with all due respect—

Mr. MICA. Sir, did you speak with her on three occasions, yes or no?

Mr. SCOTT. Mr. Chairman, if the gentleman is not allowed to answer—

Mr. MCCOLLUM. You need to allow the witness to answer, Mr. Mica. If he completes his first answer, then you can ask him the

second one. I'll allow both answers. He has not finished his first answer. I think that's the problem.

Mr. Noble, will you please finish.

Mr. NOBLE. Thank you.

I spoke with Chuck Sarabyn's sister.

Mr. MICA. On how many occasions?

Mr. NOBLE. Two or three occasions. I did not know and am surprised to find out that Chuck Sarabyn's sister was his negotiator. I thought he had hired counsel.

Mr. MICA. So you were negotiating with his sister on the terms of the settlement and the rehiring.

Mr. NOBLE. Sir, that is a mischaracterization of what I said.

Mr. MICA. Mr. Noble, did Mr. Hartnett come to you at any time after Mr. Chojnacki and Mr. Sarabyn had been fired and say that it was his view that he did—if—if these agents were not rehired, their truthful story and the fact that it covered up their truthful story would eventually come out?

Mr. NOBLE. Mr. Hartnett had never made any statement like that to me nor have I heard Mr. Sarabyn or Mr. Chojnacki say anything during these hearings or in any MSPB hearing or any other context that suggests that anything in this report is untrue, that there is anything to cover up, that there's anything more they have to add. You have had them testify. What have they said that's incorrect about this report?

Mr. MICA. Mr. Noble, you testified earlier when questioned by Mr. Chabot, my colleague here, that no one in Washington was told that the element of surprise was compromised on the morning of the raid. I'd like the clerk to distribute——

Mr. NOBLE. That is not what I said, sir.

Mr. MICA. Document 21.

[The information follows:]

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## MEMORANDUM OF INTERVIEW

PAGE: 4

FILE TITLE: [REDACTED]	DATE: February 16, 1994
INTERVIEWING AGENT: ROBERT M. GATTISON	WACO ADMINISTRATIVE REVIEW

tactical coordinator and [REDACTED] felt this was his responsibility, and expressed this to Chojnacki. However, Mastin placed himself on the warrant team, Royster placed himself in one of the helicopters, therefore, the CP was assigned to [REDACTED]. After the briefing [REDACTED] returned to his hotel room for the evening.

On Sunday, 2/28/93, [REDACTED] arrived at the CP between 6:00-7:00AM. Present at the CP were Royster, Lewis, Krone, Alley, Bradley, Betterton, Sarabyn, Chojnacki, and two clerks from the Houston District office. [REDACTED] was outside the CP most of the morning, lining up vehicles assigned to the support functions. When asked if DEA was present, [REDACTED] remembers seeing DEA after the warrant, but could not recall seeing DEA at the CP on the morning of 2/28/93. Sarabyn and/or Dunagan were responsible for coordinating the search and the support teams.

At approximately 9:10-9:15AM, an unknown person informed [REDACTED] that the warrants had been moved to an earlier time, due to the undercover agent saying that Howell knew ATF was coming. [REDACTED] was then told to get ready to go. [REDACTED] was asked, by an unknown agent, why they were going early, and [REDACTED] said he didn't know.

[REDACTED] entered the CP and proceeded to the radio room. [REDACTED] asked the clerks to get Headquarters and Cavanaugh, at the undercover, on the telephones. [REDACTED] informed Vita, in Washington, that the teams were enroute and they were almost at the compound. Vita asked [REDACTED] why the teams were going early and [REDACTED] informed him of Howell's comments to the undercover. Vita again asked why they were going early based on these statements, and [REDACTED] said he did not know. [REDACTED] kept the telephone line open between Headquarters and Cavanaugh. [REDACTED] held one telephone to each ear and heard Cavanaugh repeatedly calling for the helicopters over the radio. [REDACTED] then heard Cavanaugh say, "oh shit we're taking fire, there's someone in the tower, look to the right side". [REDACTED] also heard the forward observers calling out targets, and lots of gunfire. [REDACTED] summarized this information to Vita on the other telephone line, and advised him that there were casualties. [REDACTED] did not recall hearing Vita saying much.

Approximately 30 seconds into the gunfight, [REDACTED] advised Alley to radio Appelt and Myers (the Mag Bag search team) and have them return to the CP. [REDACTED] then heard the helicopter, over the radio, stating that they were taking fire and they were going down. [REDACTED] requested S/A Wheeler retrieve his warrant gear from his vehicle and assemble all present ATF agents outside the CP. [REDACTED] then advised Vita and Cavanaugh that Lewis was taking over the telephone lines.

[REDACTED] went outside, divided the agents into small groups, and saw the helicopters returning. [REDACTED] requested the Austin ATF agents to assist him in developing a plan. While [REDACTED] was outside, he saw Chojnacki return from the

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Mr. NOBLE. Sir, that is not what I said. What I said was I was certain that no one at main Treasury had been made aware of it.

Mr. MICA. Well—

Mr. NOBLE. I had no information with regard to whether anyone at ATF had been made aware of it.

Mr. MICA. All right. In document 21, if you'll look at it, sir, when I read this it sounds to me like someone in Washington did know, and then Mr. Cavanaugh who could abort the raid was on the phone with him. Why didn't Mr. Vita call off the raid and why didn't Mr. Cavanaugh call off the raid?

Mr. NOBLE. I have not heard any information from any witness here or at any other time saying there was someone in Washington who was notified of that raid and who could have called it off who didn't call it off. This is news to me.

Mr. MICA. Mr. Noble, why isn't this phone call that I've presented, the document with presented some information about that in your report?

Mr. NOBLE. Sir, nothing you said in the questioning suggests to me that the reports have been changed in any way. Thank you.

Mr. MCCOLLUM. Mr. Mica, your time is up.

Ms. Jackson Lee, I believe your time is available and you are recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, thank you very much. And I, for fear of being redundant, I will offer to acknowledge, as I have made a commitment to do, that lives were lost and this was a tragedy and I have not heard any response, Mr. Noble, from you to suggest you did not think that this was in fact a tragedy, an extreme loss of life.

Mr. NOBLE. Very unfortunate and it saddens me to this day.

Ms. JACKSON LEE. Let me, if I might, just pursue a line of questioning with you. First, to acknowledge your indignation for a variety of things that may have been said or you may have read. But if I can have a yes or no, and you partly answered it, it is not an indignation or a lack of respect for the loss of lives, whether they be ATF, and you've already made that clear, or the Branch Davidians. Is that my understanding?

Mr. NOBLE. Yes.

Ms. JACKSON LEE. I also note that during this period of time you've received several promotions or at least one where you are now Under Secretary for Enforcement. In the report that you so noted and allowed us to see the numbers of individuals involved, there was seemingly a suggestion and maybe even a statement on the record about coverup. Was your introduction of these individuals to inform us of the wide number of persons who were part of this report?

Mr. NOBLE. That's correct.

Ms. JACKSON LEE. And these persons, were all of them under your jurisdiction or at least in a position to be, if you will, subjugated by you and told what to do or were they allowed to fully investigate and to come up with independent assumptions and conclusions, or were you actively involved in their determinations?

Mr. NOBLE. They were permitted to investigate this matter thoroughly and comprehensively, which is what they did.

Ms. JACKSON LEE. It also has been noted in the record, and I'd like to have a clarification or at least an explanation by you that at least even though there was not a coordinated coordination in effect, there was a point where you did say hold up, and that was the day before your dinner, at least either the day of or the day before your dinner phone call that you got. But there was a point, I believe, where you asked some requests about whether we—and this was in the midst of the Trade Center tragedy, as well. Is that my understanding?

Mr. NOBLE. That's correct.

Ms. JACKSON LEE. You actually voiced some concerns. Can you tell me your words, please, if you can recollect them to the best of your recollection?

Mr. NOBLE. I have a clear recollection of telling John Simpson that I wasn't the Acting Assistant Secretary for Enforcement, but if I were the Acting Assistant Secretary for Enforcement, I would not let the raid proceed based on a limited amount of information that he had before him.

Ms. JACKSON LEE. And you likewise had a limited amount of information?

Mr. NOBLE. That's correct.

Ms. JACKSON LEE. And this was about the first—this period of time was about the first time it had come to your attention.

Mr. NOBLE. This was the first time it had come to my attention and the day, February 26, 1993, late afternoon, early evening.

Ms. JACKSON LEE. And did you subsequently learn that—I assume you came on board some time the month of January or February to this present department.

Mr. NOBLE. I worked as a consultant Wednesday afternoons through Friday afternoons from January 25 through April 29, I believe.

Ms. JACKSON LEE. In the final conclusion of either reviewing, did you come to understand that this Waco investigation had in fact preceded January 1993, and in fact was going on during the previous administration?

Mr. NOBLE. During our investigation, we learned that it was begun June 20, 1992, I believe.

Ms. JACKSON LEE. So when this call came in during your dinner, you had still had reservations but what then was the reinforcement or at least I shouldn't say reinforcement, the data that you got that caused you to make the remarks that you did? And I don't want to put words in your mouth as to what you said.

Mr. NOBLE. The Director of ATF, a person whom I knew had occupied that position for 10 or 11 years, had personally investigated the matter, had personally been in contact with whomever, either the Associate Director for Law Enforcement or the field commanders in Waco, and had gotten assurances that they were sending an undercover agent into the compound and if anything looked unusual, if Koresh learned about the raid or anything looked unusual at all that they were not going to go forward with the raid and he had made that clear to them.

Ms. JACKSON LEE. So you heard that there was a backup of not going forward from the person who should be in charge, and I assume those under him. You heard the signal or the words if—if

Koresh was notified or had knowledge of, would not go forward, if there was any sign of publicity or any element that would remove the surprise or the secrecy, or whatever, would not go forward. Is that what you heard?

Mr. NOBLE. That's correct. If Koresh acted suspiciously or altered the plan that was the basis for the 10 in the morning raid, that it would be called off.

Ms. JACKSON LEE. And most of all, did you hear that it would be a setting where the women and children would be separated, and let me not put words in your mouth so you can correct me if I'm not recounting it correctly, that the guns would be locked up and that Koresh would be separated or the men would be separated. Did you hear that as well?

Mr. NOBLE. That's correct.

Ms. JACKSON LEE. You have had a very diverse background. I understand you were a law professor for a period of time?

Mr. NOBLE. I hope one day to become a law professor again.

Ms. JACKSON LEE. It is an excellent profession. I have a spouse that does that quite well. What did you teach?

Mr. NOBLE. Evidence, Federal criminal law, criminal law and lawyering.

Ms. JACKSON LEE. While you were in that setting, would it have been your style to teach incorrect practice?

Mr. NOBLE. I hope not.

Ms. JACKSON LEE. And so even though you were not at the cutting edge of the decision, certainly as now the new Under Secretary for Enforcement and your previous position, would you have been concerned about any sort of indicia in the search warrant that would have made it a search warrant that would have failed in court? Would you have been concerned about that?

Mr. NOBLE. Absolutely.

Ms. JACKSON LEE. And you have the experience then based upon your teaching credentials to at least be noted about the failings of any search warrant that would not have made muster in court?

Mr. NOBLE. And I was a line prosecutor for 4 years.

Mr. MCCOLLUM. Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much.

Mr. MCCOLLUM. Your time has expired.

Mr. Schiff, you are recognized for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. Noble, can I say first that with respect, contrary to your opening statement, the issue of the military has not been taken off the table.

Mr. NOBLE. Thank you, sir. Yes, sir.

Mr. SCHIFF. I just want to say I believe that the Posse Comitatus Act may not have been violated, but I think military policy was very seriously violated. Second of all, you said here that if you were—I don't want to misquote you.

Mr. NOBLE. Sure.

Mr. SCHIFF. I believe you said if I were Assistant Secretary for Enforcement of the Treasury Department, I knew enough to have called off the raid. Did I hear that correctly?

Mr. NOBLE. Very close. I believe I said that—

Mr. SCHIFF. Close enough for this purpose?



Mr. NOBLE. I believe I said that if I were the Acting Assistant Secretary for Enforcement, which was the person whom I was advising, I would not have let the raid go forward.

Mr. SCHIFF. Who was the Acting Assistant?

Mr. NOBLE. John Simpson.

Mr. SCHIFF. Pardon?

Mr. NOBLE. John Simpson.

Mr. SCHIFF. And he had the authority to call off the raid?

Mr. NOBLE. He believed and acted as though he had the authority to call off the raid.

Mr. SCHIFF. And he did not do so.

Mr. NOBLE. He called off the raid on the evening of February 26. He told Steve Higgins that in light of the information that he had available before him and certain concerns that were raised that Steve Higgins was not authorized to proceed with the raid.

Mr. SCHIFF. But the raid—the raid did happen anyway.

Mr. NOBLE. Steve Higgins called him back on Friday evening and again on Saturday. The concerns that John Simpson had and the concerns that I had were addressed and therefore the stoppage, if you will, was lifted.

Mr. SCHIFF. But the authority to say it can't go back on still was with the Treasury Department, is that right?

Mr. NOBLE. We acted as though we had the authority to order Steve Higgins not to permit a raid to go forward and we acted upon that authority on February 26, 1993.

Mr. SCHIFF. By ordering him not to go forward.

Mr. NOBLE. By directing that in the evening when John Simpson called Steve Higgins, that based on the concerns that John Simpson had, he would not authorize the raid to proceed.

Mr. SCHIFF. I'm just making the point that the Treasury Department could say no and did say no, at least at one point. I wrote down a part of a quote, you said, Mr. Noble. I believe it was: If the Treasury Department directive had been followed—I don't have the exact words after that but the implication was the tragedy would not have occurred. Am I pretty close on that?

Mr. NOBLE. I believe I said that if the assurances that Director Higgins gave to John Simpson that the people near Waco or at Waco were told that if anything didn't look right, if Koresh was not acting as previously planned, that the raid would not go forward, that's correct.

Mr. SCHIFF. All right. So you're saying that there was a violation of the directives from the Treasury Department. And I'd like to ask you—

Mr. NOBLE. I'm saying that the assurances that Steve Higgins gave were not followed and that was a tragic mistake that led to the loss of lives.

Mr. SCHIFF. Are any of these assurances in writing? I mean, is there any paper trail here that we can go back to that you found in putting together the report that we can trace back and forth as to what was said back and forth?

Mr. NOBLE. You have the memoranda of interview of Steve Higgins, John Simpson.

Mr. SCHIFF. I know that.

Mr. NOBLE. Michael Langen, Ron Noble.

Mr. SCHIFF. Are there any written memoranda?

Mr. NOBLE. They have testified under oath before you. You have the memoranda of interview of Mr. Chojnacki.

Mr. SCHIFF. My question is more specific, if I could interrupt for this purpose. Was there any written memoranda that went back and forth contemporaneously with these conversations?

Mr. NOBLE. These were phone conversations.

Mr. SCHIFF. Did I also understand that you—that you expressed some—you learned about the FBI plan—this is at the other end of this situation—in April after the Justice Department and the FBI had taken over the matter that you learned about their plan to try to go into the compound with tear gas and so forth and end the siege, did you learn about that before it occurred?

Mr. NOBLE. Did I learn about it before what occurred? I'm sorry.

Mr. SCHIFF. Did you learn about the intent of the FBI, now that the Justice Department had taken over this situation, to try to end the siege by moving into the compound?

Mr. NOBLE. Before April 19.

Mr. SCHIFF. Before April 19.

Mr. NOBLE. Yes, sir.

Mr. SCHIFF. Did I understand that you felt certain apprehensions about that plan? Did you feel that it posed any specific problem for—or were you concerned about it?

Mr. NOBLE. I was concerned about it. The FBI had stated to me what the plan was very generally, what the risks were, and that the Attorney General was going to get some independent input and then make a decision.

Mr. SCHIFF. Well, of course the—the—well, did you have some concerns, I'm sorry, about what you were being told from the FBI?

Mr. NOBLE. The concerns, as I recall, originated with the FBI that they understood or at least communicated to me, therefore, I assumed they understood that there were risks associated with the plan but they felt that in light of the circumstances and all of which they didn't go into, this would be the appropriate thing to do and that's what they had recommended to the Attorney General and she was going to get independent input of some sort.

Mr. SCHIFF. Mr. Altman, as you know, wrote a memorandum to the Secretary of the Treasury expressing reservations about this plan. Did you have similar reservations?

Mr. NOBLE. It's possible that I saw the memo you are referring to either yesterday or the day before, and I guess what Roger Altman did was communicate to Secretary Bentsen some of what I told him.

Mr. SCHIFF. Did you have concerns similar to Mr. Altman's?

Mr. NOBLE. The concerns originated with the FBI.

Mr. SCHIFF. If so, what did you do about it?

Mr. NOBLE. The concern and the plan, and I say "plan" in quotes, because it wasn't given in any detail, were communicated to me and I communicated them to Deputy Secretary Altman.

Mr. SCHIFF. I'm going to ask one more time. Did you have any concerns and reservations about the plan as it was explained to you by the FBI? That's a yes or a no.

Mr. NOBLE. I've tried to answer it straightforwardly, sir. The concerns I had were the concerns that the FBI had, the concerns that I believe anyone who would think about this would have, yes.

Mr. SCHIFF. All right.

Now, once you had those concerns, as you heard the plan, you being at the rank you were in the Treasury Department, did you go to anyone, either in the Treasury Department or the Justice Department to express those concerns?

Mr. NOBLE. Concerns that they already knew about?

Mr. SCHIFF. Well, how do you know they already knew about it?

Mr. NOBLE. Because they told me.

Mr. SCHIFF. No, that's the FBI. How do you know the Attorney General?

Mr. NOBLE. The FBI is in the Justice Department.

Mr. SCHIFF. Yes. But how do you know the Attorney General knew about them?

Mr. NOBLE. Listen, I operate one way. I assume that career civil servants, career law enforcement officers, people I worked with, are honest and are going to report things to their boss comprehensively. I don't assume people who tell me things are not going to represent them accurately to their bosses.

Mr. SCHIFF. Of course, your report—

Mr. MCCOLLUM. Mr. Schiff, your time is up.

Mr. SCHIFF. If I can just finish—of course your report charges career law enforcement officers with lying.

Mr. NOBLE. That's right. When 61 people say that Mr. Chojnacki and Mr. Sarabyn pointed the finger at a rank and file agent, yes, that's something we act on.

Mr. MCCOLLUM. Mr. Brewster, you're now recognized for 5 minutes.

Mr. BREWSTER. Thank you, Mr. Chairman.

Take a little different tack in some of the questions. It's my understanding from some discussions I've had that the Texas Rangers felt they were not treated well at all during the siege time at Waco. Are you aware of that feeling?

Mr. NOBLE. Sir, I say this with all due respect to the question. I very much would like to leave this hearing not saying anything bad about any law enforcement component, unless necessary.

I know—I know, having been with the FBI's whose strategy rescue team, that when they come into an operation, they take over, and I've been with other law enforcement officers when it happens, and it is not something that makes law enforcement officers, who believe they're able, happy. That's just the way it is.

Mr. BREWSTER. Was that a yes?

Mr. NOBLE. Yes.

Mr. BREWSTER. OK. Along that same line, it was my understanding that Koresh at one point asked to negotiate with the Texas Rangers, they at one point asked to negotiate with him. Is that correct? And if you could make it shorter, I don't have a lot of time.

Mr. NOBLE. OK. This is going to be fast. I saw it on TV, yes.

Mr. BREWSTER. I'm sorry?

Mr. NOBLE. I saw the Texas Rangers interviewed on TV where they said that; so that's the source of my information.

Mr. BREWSTER. OK. I haven't seen that.

Mr. Magaw, I'm certainly impressed with the discussion that you and I have had previously and also with your discussions of the many things that went wrong here and how you feel that you're making progress in keeping it from happening again that way.

Also, I think you've been very straight up in talking about the fact that the tactical intelligence was not good, that you changed the press structure, that you made many changes in ATF. Along that same line—and I'm just asking a rhetorical question—why would we not be better served for ATF to be part of FBI and FBI do the intelligence part, ATF do the firearms part?

Mr. MAGAW. My personal and professional view here, sir, is that if you give firearms to the FBI, firearms take you into every jurisdiction, and once you're into that jurisdiction, you can work it, if you come into it through a—and what you would be doing is making almost a Federal police force. There would be almost nothing they couldn't reach through those firearms in these jurisdictions. I believe that it would not be the proper thing to do.

I think you need the checks and balances like we have now. Director Freeh and I and Mr. Constantine, all, we confer all the time. I think you need the checks and balances.

The other reason is that they've tried to tear this organization apart, as I studied since I've been over here, since 1972, under that administration, again in 1982, and now again in 1993 and 1995, and each time, when it's been looked at and vetted, you have here a tax collector, you have here a regulator, and you have here an enforcement. If you move any one of them, you also have to move proportions of the other, because they intertwine. It's very different from a normal law enforcement organization.

So to tear it apart, just—and in everybody's view, after they vetted it, each time, to include Vice President Gore's National Performance Review Team just a few months ago said that it ought to remain where it is, single, close oversight. This Bureau needs close oversight. It needs close oversight because every jurisdiction is controversial.

Somebody said to me the other day, well, arson is not controversial. Well, it is when it involves an abortion clinic. And so you have to be very careful with these jurisdictions because of the kinds of things, and we have to make sure that we have close oversight.

So I understand exactly how you want us to work these jurisdictions. For instance, in the crime bill that just came up, there's a section in the crime bill that has—that says that if you have a magazine of 10 or more rounds, it's not a valid way—it's a—it's a violation of the crime bill.

But when you looked at a couple of weapons that are out there that—the old western style, that you cock each time, did have 10 magazine—a magazine for 10 rounds, we worked that out with the—with the industry, to try—that isn't what your intent was; we knew it wasn't your intent. So to come across and say, no, you can't have that weapon, we've got to make sure we're doing that kind of thing, and that's—I think this Bureau has done a great job of interfacing with the alcohol and the tobacco industry over the years, not so good a job interfacing with the firearms industry, and we're going to do a better job at that.

Mr. BREWSTER. You make a very good argument in that.

You made a statement earlier too, the more successful you are in keeping guns from criminals and prosecuting criminals, the less gun control will be needed. I certainly agree with that statement. I was glad to hear you say that.

If you had an identical situation today—and I happen to believe that Koresh and the Davidians were not the only group like that out there across this country—if you had an identical situation today, how would you handle it?

Mr. MAGAW. Well, the first thing I would have done a long time ago, if I had the identical situation and were thinking about how to investigate it, is that I would confer not only with Treasury. Mr. Noble has placed a lot of oversight on these Bureaus that was never there before, and he's kind of at a disadvantage in answering some of these questions because there weren't procedures before. I've served seven administrations and I think in that period of time eight Assistant Secretaries for Law Enforcement, and there has never been the oversight before, nor did they have guidelines, which he's now constructing with over—with working with us. So I think that part.

Obviously if you're—if you're talking about it, we're doing some of that now, with Justice and all the other departments around the country that have law enforcement, to try to draw on the best way to handle this situation, not operating in a vacuum.

I've already discontinued two undercover cases because I couldn't protect—that if we went the next step, I could not protect the undercover agent, and I withdrew that undercover agent. We'll still make those kinds of judgments as we—as we go along, sir.

Mr. BREWSTER. Well, your answer is that you're working on how you would actually work one of those, and you and Mr. Noble can give us an answer at a later time as to exactly how you would address it.

Mr. MAGAW. Exactly.

Mr. BREWSTER. Well, I appreciate your forthright attitude. I appreciate the work you've gone to, to make some significant changes at ATF.

Mr. MCCOLLUM. Mr. Buyer, you're given 5 minutes.

Mr. BUYER. Thank you, Mr. Chairman.

Mr. Noble, bear with me for a second. I've been out of the committee room for about an hour and a half, so if I'm redundant, just say you're redundant, I'll move on; all right?

Mr. NOBLE. Thank you, sir.

Mr. BUYER. Thanks. I'll give you that courtesy and extend it likewise.

Mr. NOBLE. You'll forgive me if I'm slurring at this point.

Mr. BUYER. All right, thanks.

Let me—something that did catch my attention, because of all the reading that I've done, is, this is the first time that I'm now learning that prior to the raid, when you had learned—someone had briefed you, I guess, on what some possible plan was—that you said, huh-uh, let's not do this. So that's what—I have a few questions on that.

When did you receive a briefing that caused you to have concerns about the raid? If you could help me.

Mr. NOBLE. On page 178 of the report, second full paragraph, it explains that for you, sir.

Mr. BUYER. All right. Good. I can read, so I'll cover that.

Let me ask a question about your order that the raid not go off. Did you—is that what you—how did you—tell me what you said?

Mr. NOBLE. I'm trying to be honest and yet not make it seem as though someone else is responsible. So when you say order, I was not authorized to order anything. I was a consultant.

However, I'm saying that I addressed the situation as if I were in the position, so when I was giving advice to the Acting Assistant Secretary, I, like many lawyers do, put myself in his position. So I'm trying to be accurate for the record but not distance myself from the decision that was made.

Mr. BUYER. If you were the acting, it was not—you felt uncomfortable not having the authority—

Mr. NOBLE. I didn't feel uncomfortable. I just didn't have the authority.

Mr. BUYER. OK. Then did you bounce it up to whoever did have the authority?

Mr. NOBLE. That's what I'm saying, is the person who had the authority. His name is John Simpson. He was the Acting Assistant Secretary for Enforcement. He's the person whom I advised about all the concerns I had. He's the person with the de jure and de facto authority to have called off the raid or permit the raid to proceed.

Mr. BUYER. All right. Whatever your gut reactions are, I salute you. I've got about 19 years of military background, and with regard to the tactics and planning, it was very, very poor.

The part of Mr. Brewster's question that he asked you, Director, I'm not sure I'm in agreement with your response, because as I sit through these hearings I am asking about the legitimate roles of Government and our oversight functions, and I agree with you when you said ATF is an agency that needs close oversight.

I mean not only within the Treasury, but that's our purpose and function, is constitutionally, and I have been bothered that, I guess from the Watergate hearings, it's almost laid down the marker in this town, that if you have a congressional oversight hearing, that there must be a smoking gun, and I don't think that's necessarily true either, OK. So I want you to know that; I'm being upfront with you; and I also—that's not a question.

Mr. NOBLE. I just appreciate it. It's a good point.

Mr. BUYER. I also, though, know all the political garbage that's going on in the town too, back and forth, back and forth, and I wish we could just get on with the business.

But part of our—the question that I go through, is, is there a future for the ATF? That's what I am asking myself. And if there is a future for the ATF, what kind of future is it? Or do we go back to the—don't call them ATF, call them revenueurs again, I guess, moving firearms to FBI. I mean I've been asking that question.

I think Mr. Brewster's question was very good, and when you said, well, let's not really do that, because wouldn't that make them just a Federal police force? Isn't that what ATF is now?

So would you help me answer that question? See, I disagree with that.

Mr. MAGAW. ATF has fairly limited jurisdictions: Firearms, we don't get into financial institution fraud, we don't get into bank robbery, any of those things; and so the firearms, by the fact that it's a regulatory industry, it's also tax collected on that, it all fits very well in the Treasury scene—scheme.

And because firearms are so controversial and there's so much passion throughout the country pro and con for them, I believe that you leave them in an agency like this where you have the close oversight.

And that's strictly my opinion and my judgment.

Mr. BUYER. All right. Well, we're going to keep on that issue, because that will be some of the carryover issues after that, after this hearing, and right now I'm going to yield the balance of my time to Mr. Ehrlich.

Thank you.

Mr. MCCOLLUM. Let's see.

At this point, Mr. Ehrlich, you will be recognized. I don't think we have somebody else on this side of the aisle that wants to go right now anyway, so you have the 30 seconds plus your own time. So go right ahead.

Mr. EHRLICH. Thank you, Mr. Chairman.

Please indulge me for a second. We talk about political garbage. My colleague to my right used the phrase "political garbage," and a lot of us on both sides of the aisle are actually trying to get facts that we appreciate your testimony here today.

I just—the source of my utter frustration with this town, being here 6 months, is comments like the following that were made at the White House press briefing today.

In answer to a question to Mr. McCurry, how specifically are the Republicans trashing law enforcement? This answer was elicited. By implying to the American people that somehow or other the conduct that they are looking at in Waco is representative of the way law enforcement officers behave, and the President is going to stand forthwith, with law enforcement officers, foursquare with law enforcement officers. He is standing up for the law enforcement officers in this country who put their lives on the line while this Republican majority and this committee attempt to undermine confidence in law enforcement officers.

I assure you both that's not my purpose, and I have a couple very specific questions for you.

Mr. Noble, revisiting hopefully for the last time this whole military issue, I'm just trying to get your conclusion straight. Is it your testimony that ATF, by training with the Joint Task Force No. Six, it was—it's my understanding that that training occurred only because of the presence of the allegation of a drug nexus, and is that a misunderstanding on my part, first of all? And, if it's not, was that training appropriate, in your view?

Mr. NOBLE. It's my understanding that ATF gave information to the military about the drug-related activity, albeit back in 1989.

Mr. EHRLICH. I think it was 1987.

Mr. NOBLE. I'm sorry?

Mr. EHRLICH. I think it was 1987. Whatever.

Mr. NOBLE. I think it was 1989—1987 or 1989—and that the military was satisfied that that information was such that a par-

ticular component of it could assist ATF, and I believe that is the component that you just referred to, sir, yes.

Mr. EHRLICH. All right, thank you. Thank you very much.

Now, you both have talked about new guidelines that have been promulgated with respect to sensitive operations, and what I'd like you to do—and I really appreciate your testimony today from both of you, and I've tried to take pretty copious notes with respect to questions like Mr. Brewster's and a number of questions that have come along over the course of the last hour with respect to, if a similar situation occurred today, what changes would—what would take place today that would not have taken place under the old procedures, under the old personnel that were in place at the time, and I've tried to write down a number of the observations you both have made.

First, supervisors were in the wrong place. Second, you would have consulted cult experts, where cults are involved. Third, inspection, oversight shooting review team now in place. Fourth, the press would have been out of the way. Fifth, operational security would have been in place and personnel sensitized to the importance of operational security.

And you made a more general statement, not with respect to Waco, that you've discontinued a number of cover cases because you could not secure your personnel.

Could you both please take a shot at giving us more examples of specifics that have changed as a result of this incident, both with respect to personnel and procedure?

Mr. NOBLE. Maybe I could take a shot at the policy level and then whatever Director Magaw would like to say about the operational.

At the policy level, what I believe has to happen, and what I've tried to make sure happens, is that once a case is initiated as, let's say, a sensitive case with undercover implications, that when that case is presented to the undercover review committee, that we have as diverse a group on that committee to make sure that whatever decisions are made are made from as wide a range of perspectives as possible.

So we have undercover review committees embracing more than one bureau, first point.

Second point——

Mr. EHRLICH. And that certainly was not in place prior to Waco.

Mr. NOBLE. That's correct, sir.

Second point is that we invite the Justice Department's Criminal Division lawyers to have a seat on that undercover review committee and therefore get the benefit of their oversight over Justice-based operational matters, so that again we have information coming in.

That's just one concrete example of how, early on, we can address policy decisions not 2 days before the raid goes but when the case is first investigated or initiated.

And I'd ask Director Magaw to talk about operational.

Mr. EHRLICH. Thank you very much.

Mr. MAGAW. First of all, ATF will never again, as long as I'm the Director, take up an operation this large by itself. So it cannot hap-



pen again, because we won't take this kind of an operation on. We're not capable of handling it by ourself.

Having said that, there are a number of things that we would work on, and we're in the process, working through Treasury and with Justice and everybody under Justice, to try to put some plans together so that we will be able to function in a large capacity like this as a team member, and some of the things you've already mentioned I won't repeat.

But what we've done already is, we provided crisis management training for all of our headquarters staff, and we're also doing it for all of our special agents in charge and the supervisors of our SRT teams.

The other thing that when I came here, there were 24 SRT teams; there was one for each Division.

You have to remember now that ATF does an awful lot of search warrants, because obviously explosives and guns are hidden, and so we execute an awful lot of search warrants.

But 24 teams. How do you keep them properly trained? Do you overuse them when there's that many? My judgment was—is that you do, and therefore I've reduced that number to six. They will be better trained, less used, and one of the things that is an overriding policy now is that when you have a search warrant or you're going to make an arrest or you have to search a property, try to find every way possible that you can without using a dynamic entry. Dynamic entry is absolutely the last choice, and you better kick it up to a supervisor above you, above the field level, to headquarters, before you activate that dynamic entry.

Mr. MCCOLLUM. Mr. Ehrlich—

Mr. EHRLICH. I want to thank you for your answer, the both of you. The points you raise are the kind of specifics and the reason that we're here. Thank you very much.

Mr. MCCOLLUM. Mr. Ehrlich, thank you very much.

Mr. Coble, you're recognized for 5 minutes.

Mr. COBLE. I thank the chairman.

Gentlemen, it's been suggested that Oklahoma City triggered these hearings. Not true with me; 2 years ago, I tried to get these hearings conducted, not to bash anyone, not to embarrass anyone, but to illuminate an area of the Federal Government that appeared to be awash with conflicting stories. The post-Waco environment cried out for a hearing, it appeared to me.

Mr. Magaw, as you well know, law enforcement is a risk assumption business, and I care not what sort of perfections you insert, you will never be able to assure your law enforcement men and women that they will not have to assume risk, and I, along with the gentlemen from Oklahoma and Maryland, would like to—I'm interested in the changes, and I want to get with you at a mutually convenient time.

Let me revisit a point I made last week. We are, today enjoying—not enjoying, strike that. We are today experiencing the luxury of applying 20–20 hindsight, unlike the guys and gals and women who were there the day it went down.

The most plaguing feature of the Waco episode to me is the non-arrest of the charismatic, self-proclaimed prophet, head of the snake, the lead dog, the nerve center of the compound—call him

what you will—but by the way of an arrest warrant, get him off the premises, remove him, maintain custody and control, even for just a few hours, execute the search warrant, conduct the search out of the presence of the leader of the compound. Now that is very simplified, I will admit.

Here is what bothers me. The Treasury report at one point says Koresh, quote, apparently never left, close quote, and therefore couldn't be arrested. At the criminal trial, however, it was revealed that he did from time to time leave. In fact, as recently as 4 days prior to the raid.

Then Treasury's defense, perhaps subsequent defense, and I believe, Mr. Noble, in your words, an arrest would not have been a good idea because it would have—it resulted in evidence having been destroyed or, in the words of others, the Davidians resisting.

Now, Mr. Noble, if you can resolve this enigma for me. On the one hand it appears that the Treasury report implied he never left and therefore precluding arrest. Subsequently it appears the Treasury report reflects that it would not have been a good idea to arrest for this reason or that reason.

Talk to me, Mr. Noble.

Mr. NOBLE. Talk to you. First, I'd like permission following today's hearing to answer your question in writing specifically. I'll do it from my memory right now.

Mr. COBLE. That will be fine.

Mr. MCCOLLUM. Without objection, you may do so.

Mr. NOBLE. I'm sorry, I ask you, I apologize. The first point is, the Treasury Department report makes absolutely clear a bright line distinction. ATF believed, the raid planners believed, based on faulty intelligence, that Koresh never left the compound. This report, the Treasury report, states expressly that Koresh left the compound on a number of occasions—few, few, low number of occasions. The Treasury report expressly states that the option of arresting Koresh off the compound was not adequately considered.

The Treasury Department report does not go through all the permutations that make your hypothetical realistic in New York City or Washington, DC, or any city, but not realistic in Waco, TX, and I say for the following reason.

If Koresh did not leave the compound on a patterned basis, so that the law enforcement agents could say Sunday morning, 8 o'clock, he always goes into town; every Sunday, 8 o'clock, he's in town; we get all the law enforcement agents ready; when he goes into town, grab him, and then immediately execute the search warrants for the compound.

If Koresh doesn't leave the compound on a patterned basis, then you have to have the number of agents necessary to execute search warrants, secreted somewhere near Waco, TX.

Our report exposed the fact that even the hotel reservations that occurred on February 27 would have alerted someone as to the operational security risks involved.

So I say it's just a hypothetical, it's a theoretical premise, that you can both arrest someone and execute search warrants without the world finding out when the world is as modestly populated in that area. And I say that with all due respect.

I also would just for the record say, on page 140, footnote 39 states the number of times we were able to identify that Koresh left the compound.

Mr. COBLE. If you will, Mr. Noble, and of course I reiterate, I realize applying 20-20 is a whole lot easier than having been there, but we are trying to keep it from repeating itself. That should be the purpose of the hearings.

Mr. NOBLE. We understand that. Thank you, sir.

Mr. COBLE. Gentlemen, thank you all for being here, and I thank the gentleman from Florida.

Mr. MCCOLLUM. Mrs. Thurman is still reserving her time, as is Mr. Schumer, so I now recognize Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. I would like to yield my time to you.

Mr. MCCOLLUM. Thank you very much for yielding.

Mr. Noble, I want to ask you just a couple of followup type of questions to clarify some of the record on this. At any time on February 26, 27, 28, prior to the raid, did you have any contact by telephone or otherwise with any other ATF agent or officer, other than Director Higgins?

Mr. NOBLE. And Mr. Cuyler, sir?

Mr. MCCOLLUM. And Mr. Cuyler.

Mr. NOBLE. No, sir.

Mr. MCCOLLUM. All right, that's fair enough.

Mr. NOBLE. You're saying prior to the raid?

Mr. MCCOLLUM. Prior to the raid.

Mr. NOBLE. That's correct.

Mr. MCCOLLUM. I'm not worried about the rest. I just want to know prior to the raid.

Mr. NOBLE. That's correct.

Mr. MCCOLLUM. Fair enough.

Now, I'd like to get to the bottom, if we could, of what has been somewhat a confusing trail of words over the past few days about the, quote, lost element of surprise. I think what disturbed Mr. Hartnett a great deal was a comment I'll quote that you made on a "60 Minutes" program, May 14, 1995. "What was absolutely clear in Washington at Treasury and in Washington at ATF was that no raid should proceed once the element of surprise was lost."

Now, let me track this back with you for a moment. As we've heard testimony here over the past couple of days, Mr. Sarabyn and Mr. Chojnacki have told us that they did not ever perceive that they had instructions or directions that, if the element of surprise, or let's call it secrecy, was not there. They were not to proceed with the raid but they did say they understood that secrecy was an important part of this but just that they didn't have any directions not to proceed if it wasn't there.

Then we've heard Mr. Hartnett describe the situation, who was of course above them as the Deputy Director of ATF, and he said as recently as today, nobody ever called and said about the raid if the element of surprise is lost. And I think that's probably true, because Mr. Higgins testified to us as well last week that at no time did he tell them about the raid if the element of surprise is lost. Now he did say he assumed that they would not proceed if the element of surprise or if the secrecy involved was lost.

The bottom line is, I haven't heard it said anywhere and I don't think you said it when you were on 60 minutes, that the Treasury Department, you or Mr. Simpson, or anybody else, ever actually gave a direction straight out to Mr. Higgins or to Mr. Cuyler not to proceed if surprise or secrecy was lost.

You indicated to us, and so did Mr. Simpson, that you had received assurances from Mr. Higgins that that would not happen. You didn't elicit—you didn't demand from him, don't go do this if it's lost. You just assumed, too, from these assurance that is wouldn't happen.

Isn't that really what we're talking about here? Am I correct now? I tried to review this as fairly as I know how.

Mr. NOBLE. The report reinforces what you say. Director Higgins gave assurances to John Simpson that if anything unusual or out of the ordinary occurred, the raid would not proceed.

It—in my view, it goes without saying that when you plan a raid to surprise someone, and you learn 45 minutes in advance they know you're coming, that if your plan was based on surprise and you're risking the lives of 76 agents, that you're not going to go forward with it.

So our view wasn't one, and the report doesn't say it—the report says the director of ATF was personally involved and he gave assurances that the people were told, were alerted, knew, would not go forward if anything unusual occurred following the undercover agent's going into the compound following the——

Mr. MCCOLLUM. Right, but you gave no orders that that would be the case, that was just an assurance you had.

Mr. NOBLE. And that's what the report says.

Mr. MCCOLLUM. No, I understand that. I'm not arguing with you, I'm just trying to clarify.

I also want to make it clear that because Mr. Hartnett and, I think to a certain degree, Mr. Higgins also have been concerned in their testimony before us that there indeed was a spin that was put on this around the terminology element of surprise. And, whether we agree with it or not, that undoubtedly is their perspective on this, and they believe that that point was being overdone because, as Mr. Hartnett put it to us today, his men were being left out there when he felt they really did not ever have orders not to proceed if the element of surprise——

Mr. NOBLE. Mr.——

Mr. MCCOLLUM. I just want to clarify, though, so that the difficulties of talk and language here can be broken, and I think we have.

Mr. NOBLE. Well, I would just like to say for the record that the report, on page 179, says Higgins asserted that those directing the raid were instructed to cancel the operation if they learned that its secrecy had been compromised or if those in the compound had departed from their established routine in any significant way.

It also states that, on page 180, had the Waco raid commanders adhered to Director Higgins' assurance that Simpson and Noble, that the raid would not go forward unless ATF had the advantage of surprise, the operation might have ended differently.

It's been our—it's been our contention in the Department of the Treasury's report that only Mr. Hartnett and Mr. Chojnacki and

Mr. Sarabyn deny, because Mr. Simpson—I mean Mr. Higgins made it absolutely clear that this raid was not supposed to proceed if the advantage of surprise was lost, and Mr. Aguilera testified about that being clear on February 12 as well.

Mr. McCOLLUM. We won't dispute that either, but the fact that they dispute it is clear.

I want to ask one other question on my time. It has to do with the opportunity to do things that were not done, because this is a question, I think, of some great import. It is not you personally we're dealing with, but I just want to ask you the question because it does have to do with comments you made earlier today in testimony that it certainly is understandable that if you get to the point in time when you've got 48 hours to try to review something before a raid is going to happen, you've just been there a short time advising Mr. Simpson, he hasn't known about this, and the procedures are such as they were at the time at the Treasury, which you did not create, then the actions that you described and the reactions are perhaps fairly understandable.

But something that disturbs me a lot, and it disturbed me when I first learned it, was the fact that when Mr. Bentsen and, for that matter, Mr. Altman first came aboard, which was somewhere around, give or take a couple of days, 30 days before this raid, the new administration had come into office in January, and they had been confirmed in their respective categories, Secretary of Treasury and Under Secretary. In the interim between then they did not have a sit-down meeting, particularly the Secretary himself, with Mr. Higgins, either in a staff group as you now do apparently rather regularly, and Mr. Altman apparently did after the 28th, although he said he might have done this one time without maybe Mr. Higgins there before. They didn't have a sit-down with the heads of the agencies, and they didn't have a particular personal contact—certainly the Secretary didn't—with Mr. Higgins, to just simply say, "Hey, tell me what's going on, give me an update, give me the general idea of what your agency's doing; I'm your new boss," if you will, the type of thing you and I probably would normally do.

And if that had happened within a week or two of the time they would have taken office, instead there would have been 48 hours of time for you to look at this, for snap judgments to be made, and go back and forth with Simpson and you talking about this and so forth, as happened on the 26th and 27th of February.

Just maybe there would have been a more deliberate look at all of these things that were going on down there, and maybe you would have discovered there had been no raid planned and people's attention would have come about, because surely Mr. Higgins would have raised the No. 1 thing on his plate at that time if that type of discussion had taken place.

Am I not correct in that assumption, that that is a criticism that should be placed? It is not a reason to come down with a great big hammer and say, you know, these guys are the primary villains in this piece, because they're not; but is it not fair for some of us to question that and to criticize the fact that those meetings never took place in that time frame? I would assume as would most people that when a Secretary takes over a new position and an under

secretary does in the first months a meeting like this would informally take place. Surely they would meet with their principal law enforcement officials at least to say hello and what's going on in your shop.

Mr. NOBLE. I say that your characterization is unfair and inaccurate. The reason for it is, I met with Mr. Higgins shortly after being named as someone who might occupy the position of Assistant Secretary for Enforcement, met with him for about 1½, 2 hours, before February 26, and Steve Higgins never mentioned to me that they were undertaking a significant law enforcement operation.

Now if he didn't mention it to me during a 2-hour meeting, I don't know how anyone could reasonably expect a Secretary of the Treasury, who has 25 or 30 presidential appointees or Bureau heads below him, just like an AG who has 25 or 30 people of that rank below him, would raise this when he didn't raise it with me.

So I would say it's unfair and inaccurate, sir. Thank you.

Mr. MCCOLLUM. Well, you're welcome. Thank you for explaining that. And I will yield 5 minutes then to Mr. Heineman.

Mr. HEINEMAN. Thank you, Mr. Chairman. Let me just pick up a little bit where you left off.

And certainly answering the first perhaps question or issue facing us when you took the floor, Mr. Noble, was the fact that you were upset about people questioning your report, and I was one of them and maybe the first, I don't know, but I did speak to it, perhaps 2 days ago. And there were issues that did concern me about that time. And I don't think these issues have been cleared up.

I think throughout the hearings they've just been—it's just raised more questions as it relates to Mr. Sarabyn's characterization of your report as being 70 percent accurate, 15 percent false, and 15 percent somewhere between.

And I'm well aware that Mr. Sarabyn was, if you call it, convicted of lying and demoted, but I don't know whether he was telling the truth here. I hope he was. He was under—he was under oath.

And then to hear Mr. Hartnett characterize your report as distortions, falsifications, and omissions; and I'm well aware that he left the service right after the raid. I don't know whether he was retired voluntarily or he was asked to leave. But somehow I get a very strong feeling that Mr. Hartnett was candid with us, although I didn't hear much here to discredit the report other than that characterization, and hopefully—when he left here today he said he would—he would expand in writing to us relative to what he meant by that characterization of your report.

And prior to reading the book I did hear rumors that David Koresh could have been captured as he was jogging each day, and of course it was rumors, and I read your report, and I even passed on what the report had to say, was that he seldom left the compound, and that's what's in the book, when they were brainstorming, is how to take David Koresh or conduct the raid, and in the book it said that David Koresh seldom left the compound.

And, lo and behold, we get a witness here who lived inside the compound, Mr. Thibodeau, who, under sworn testimony, said that

David Koresh generally jogged, I believe, the last 2 months, pretty much on a pattern.

Now, I don't know whether that's—he testified under oath, and I don't know whether that's true either, because he was a Branch Davidian and David Koresh did have a—have power over them, and he may have just been speaking in retaliation to ATF. I don't know about that.

But then as I read on about a plan—and I've been chasing a plan now since I've been speaking here for the past 4 days. Now, I've been in the business for some time, and I know an operation that takes 80 people—certainly the SRT's were from different cities, we had the military involved, we had DEA involved, we had INS involved, and we had one of the largest ATF operations that ATF has ever conducted.

Yet I look for a comprehensive plan, as Mr. Higgins spoke to in this book when he spoke to Mr. Kyler and mentioned that he sent a memo and assured that a well-reasoned, comprehensive plan had been approved, allowing for all contingencies. Well, that's reasonable. You would expect that. I would expect that. But yet there's no plan.

I know I am told that there are little plans. Perhaps each SRT has a plan, I don't know, but certainly if I'm responsible to my superiors and I have to let them know what is happening, especially if they're new, I would have to—and I would agree with you on Mr. Higgins, he should have brought it up—I would have to know that I have to send up a comprehensive plan dealing with several agencies, and I don't see that plan, the plan does not exist, and I have concerns about that. Did it ever exist? I just don't know. The basis of my doubts about this report reflect around that.

We also have—here it states: Higgins asserted that those directing the raid were instructed to cancel the operation if they learned that its secrecy had been compromised. Yet I hear testimony here that I believe Mr. Hartnett and Mr. Chojnacki, said, well, that was never an issue. But I have to say it's always an issue when you're conducting a raid. I mean if you don't have secrecy, there's no need to raid the place.

But that raises a lot of doubts in my mind about this, not that you and your colleagues here tried to shade the impact of this report, but it's just hard for me, as a professional law enforcement officer in my past life, to accept some of these things as it relates to the plan and the questions raised by Mr. Hartnett.

So I hope you don't take it personal that we question your work here, but it does raise a lot of issues that I think need to be resolved, and that's why I personally took issue with this, because I had a lot of concerns about things that I thought belonged in there and that just wasn't in there, and I'm not saying you left it out on purpose, but it's just a report that I have a little trouble with.

Would you care to comment?

Mr. NOBLE. I would love to comment, if I may, Mr. Chairman. Mr. HEINEMAN. You have got the red light.

Mr. NOBLE. The red light means go now, OK.

A number of points, if I can recall them, that were made. First is whether or not this report is accurate. I believe that's a fair inquiry. What I object to is when people say that the inquiry is—is

this report a coverup, especially when the people making the allegations are never put to the test of saying tell me what fact that's in this report is inaccurate or what fact that's not included in this report ought to be included and how that changes the core or central points. That's with regard to the report.

I will wait to see what Mr. Hartnett says about why he believes there are omissions, distortions, or falsifications, I believe were the words he used.

Second point: With regard to your comment about the plan, you referred precisely to the language at the bottom of that one-page advisory that said all contingencies and blah, blah, blah, blah, have been accounted for—the classic boilerplate language. In fact, there was no raid plan even generated until the last minute. We included what they called the comprehensive raid plan in this report.

Next point: With regard to your reliance on Mr. Chojnacki and Mr. Sarabyn, we have in this report the altered raid plan, how they tried to change it after the raid went bad, putting in facts that, if they were in before the raid went bad, would make them look more credible.

So I know, Chief, you have a lot of experience, and I respect your taking issue with certain points or aspects of this report. I would only hope that, having heard these allegations made by interested parties, that you would await to see what actual omissions or commissions they point to before concluding finally whether this is 100 percent accurate or 99 percent accurate.

Thank you, sir.

Mr. MCCOLLUM. Mr. Blute, you're recognized for 5 minutes.

Mr. BLUTE. Thank you very much, Mr. Chairman. I thank the witnesses for their testimony.

I just want to follow up on what my colleague had to say just briefly about the plan. It's true that there was no plan. There were a lot of things going on that would indicate that there probably should have been a plan, and I think your report indicates that, but—

Mr. NOBLE. Written plan.

Mr. BLUTE. I'm sorry, written plan.

But it's also true that high-level Treasury officials OK'd a massive quasi-military operation without a written plan. Is that the case?

Mr. NOBLE. We have never shied away from what we did.

Mr. BLUTE. So clearly, at the highest levels of the Treasury Department, they OK'd—

Mr. NOBLE. If the highest levels of the Treasury Department are the acting assistant secretary for enforcement, then that's correct, sir.

Mr. BLUTE. OK. Because, as you know, a Department of Defense memo indicated that the written plan had been OK'd by the highest level of the Department of Treasury.

Mr. NOBLE. If it says that, it's inaccurate, because I don't consider the acting assistant secretary for enforcement the highest level of the Treasury Department.

Mr. BLUTE. I understand.

Beyond that, let me say that I personally believe these hearings have been very beneficial. I am a relatively new Member of Con-



gress, in my 2½ years or about. I look down the aisle here, and I see a lot of people who have been here about 6 months. We think these are important hearings. We are learning about how the Bureau of ATF operates and how we can perhaps make it improved in the future. We're certainly learning about the mistakes that were made by the Bureau during this incident.

I personally resent any inference by anyone on this committee or in the White House or anywhere that we shouldn't ask the tough questions of Federal law enforcement and that in asking those questions somehow we are undermining Federal law enforcement. I think that's totally absurd, and I think it's totally wrong, and I wondered if you think that, by asking tough questions of Federal law enforcement, that somehow we're trashing Federal law enforcement.

Mr. NOBLE. Let me respond to the first part and second part.

With regard to the approval by main Treasury of the raid plan, I would say that, of the five tactical operations experts who looked at this and volunteered their time, four of the five said that the plan as the raid planners understood it had a reasonable chance of success. So not just main Treasury, experts who looked at it.

The second point: In terms of these hearings, I agree with you in part and take issue with you in part. I agree that you can ask any question you want; it's your right; we're obligated to answer. What I am personally offended by, personally offended by, is when people will attack something as a coverup or as being dishonest as the first line of inquiry.

I think that you can attack the report and assume that it's been generated by honest, hard working, dedicated career and other civil servants who are trying to do the right thing. If there are mistakes, then we should learn the mistakes, and it would help us all be better. But to move from, "I find a word that's not here," or a sentence that's not here and say coverup I think is a disservice to people who dedicated themselves to the truth.

Mr. BLUTE. But even agreeing on that point, if it is true that somehow some people in the committee didn't characterize that plan, the report, the right way, do you believe that asking tough questions is trashing Federal law enforcement?

Mr. NOBLE. I believe it's a very important role that you play in asking the tough questions that you ask on both sides of the aisle.

Mr. BLUTE. Well, I would hope that you would mention that to your colleague, Mr. McCurry, the White House Press Secretary, who just today said that these hearings somehow are trashing Federal law enforcement. Nothing could be further from the truth. We're trying to exercise our constitutionally mandated oversight responsibility.

I'm someone who voted for the Brady bill, voted for the assault weapons ban, think that the ATF has an important role in our Federal law enforcement efforts, and I just think that any inference by anyone, particularly as high as the White House, is absolutely too bad, because this is our responsibility, and I take my responsibility serious to the 600,000 constituents that I represent.

Beyond that, let me just finally ask a tough question, because I think it's important. We've heard a lot of testimony about the good in the ATF; we've heard about the bravery of Mr. Rodriguez and

Mr. Buford and many others on that raid and many other raids that the ATF are involved in; but, frankly, we've also heard about the worst of the ATF, and the report indicates some of the worst.

I think this hearing has brought forth some of the worst of the ATF. The fact that warnings were ignored about the fact that Koresh already understood that a raid was happening, that's an incredible revelation to hear about, both in your report but also here in person.

And, beyond that, we've also had indications of ATF agents attending things like racist roundups, which has been in the news recently and I know which is an issue for another day.

I think this is a legitimate question. Is there, within the ATF, according to all of your reviews, some type of Rambo element—not everyone; but is there a group of ATF agents, from your review of what has been happening, that are out of control, that are not following proper procedure?

Mr. MAGAW. Let me answer that as directly as I can. In my observation and my talking with our personnel and seeing them in action, they live in a very, very violent world. They live in all kinds of old clothes, long hair; a great percent of our work is undercover. When they make arrests, they need to go into these buildings and take quick control for the safety of everyone, and they do it every day, with a lot of success. So that there is a self-assuredness, there is a strongness of voice, there is a get control of the situation.

You saw in Rodriguez today a very quiet person but also a very strong person in terms of what he said: I will go in there, knowing they know it, facing the weapons, if you ask me to do it.

So what I am attempting to do is, as we go along, is that when you live in that kind of a violent world, it's very difficult when you come out of that violent world for a few hours to deal with the gun collector or a gun dealer or a manufacturer, that you don't carry some of that activity.

So what I want to make sure is that we do an interchange back and forth and an interfacing better, and we do that through training and sensitivity and awareness, and so there is not the Rambo, but it—but it does have some smoothing that we need to do.

Mr. BLUTE. Well, let me thank you, both of you, for your testimony, and say that I look forward to working with both of you to strengthen the ATF, to make it a viable Federal law enforcement agency in the future, and, most importantly, to regain the confidence of the American people in this agency and others, particularly in light of what happened at Waco, TX.

Thank you very much, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Mr. Blute.

Mr. Watt, you're recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Noble, Mr. Magaw, I assume both of you know what a Monday-morning quarterback is. You're familiar with that term?

Mr. NOBLE. Yes.

Mr. WATT. It seems to me that, by definition, a lot of what we are doing on this committee and have been doing is Monday-morning quarterbacking. We have the benefit of what has already transpired to inform us, to make us better able to make decisions, because we can make those decisions and evaluate those decisions

through hindsight and with information that you did not have available to you at that time.

So I'm going to give you an opportunity to do a little Monday-morning quarterbacking and satisfy us, if you would. In hindsight, knowing what you know now, is there anything that you would have done different with respect to the Waco incident?

And if you would then take away some of the facts that you now know that you didn't know then, and work your way back to the decisions that you made at the time. And, Mr. Noble, let me ask you to go first on that question.

Mr. NOBLE. I've been struggling with this for a couple years now, trying to write an article to address similar problems in the future, and I don't have the answer. I have a couple off-the-cuff thoughts, but they're not completely worked out.

One thing that comes to mind in a traditional law enforcement matter raises alarms in this matter, and that is the possibility if you had some kind of bug in the compound at the time the undercover agent went in there, and if it was clear in the way that it gathered information and you could process it immediately, think about how we would be able to know, prior to a raid's going forward, whether or not the people inside were taking any defensive actions. It's just one quick observation.

Another observation would be the whole question of how do you approach this group and how do you determine how to deal with someone who is as powerful and has such control over his followers as David Koresh and are able to do what Mr. Coble suggested, sort of get him away from the compound and yet have your people positioned to move in.

Those are not very articulate observations, but I would have pushed everything to the front end, to June and July 1992 and 1993, and had all of that time to think about how to approach this individual and this group, and not had such critical decisions or factors being considered for the first time on February 26.

Mr. WATT. Mr. Magaw.

Mr. MAGAW. My answer, Congressman, would be, first of all, that I would not have handled an event like this again by myself. So if you'd back up somewhere after the delivery company talked about weapons being delivered to the compound, and I realized that it was a large number, and I realize now that I had a religious group that had a questionable background in terms of their violence, and that at that point I would have reached out and included some of the experts who knew that kind of information about them, had background, had history.

I would have involved other members of Treasury such as the Secret Service and Customs and gone over to Justice and involved the leaders of those organizations in terms of how do we plan that. That's in fact what we're doing right now, trying to plan how an event like this could have been handled in the past.

Specific things: I still believe if those two supervisors would have been in the right place, if they would have been in the observation house across the street, away from all the excitement; you can't be in a helicopter. Of course my experience has told me that a long time ago, because I've had a lot of experience with helicopters and protection. You can't communicate very well unless you put your

own communication system in, so you can't count on that as a communication, and then your other one was right there where all the activity was going on.

I believe if those two men would have been over there and they would have seen Rodriguez' face and his expression and what he said and the emotion he said it with that day, they would have stopped that raid right then.

Mr. WATT. And both of you have been very responsive, but I have not heard either one of you say anything that we could, as a Congress or as two committees of Congress, recommend to Congress we write into law to force this kind of retroactive knowledge that you've talked about. None of the things that you've mentioned here are things that we could have required you to do legislatively.

Is there anything, in retrospect, legislatively that you could recommend that we could do as Congress to keep some future incident of this kind from occurring again?

Mr. NOBLE. I would say that having the opportunity to have people in the position of oversight matters. This Congress has cut my budget by a third, beginning October 1, 1995. So what I'm fearful about is when October 1 rolls around, my office, which is already thin, is going to be down a third, and that something might go wrong and I'll be explaining why I didn't read a memo that came across my desk more carefully, why I didn't take a phone call that I should have taken, why I didn't return a phone call. That's not purely legislatively, but it's certainly in your function.

And the other part I'm really reluctant to mention, because it raises a whole host of civil liberties issues. That is the question of whether or not law enforcement agents ought to be empowered to use electronic surveillance, or bugs, purely for safety reasons on the day of a raid or day before the raid as opposed to for collection of evidence that might be used to implicate someone.

Mr. MCCOLLUM. Mr. Watt, your time is expired.

Mr. WATT. Can Mr. Magaw respond?

Mr. MCCOLLUM. Mr. Magaw, yes, he may, certainly.

Mr. MAGAW. I don't have any legislative thoughts in mind, because I am concerned about legislation, and those people who want to get around legislation can figure that, figure out how to do it; and also it may tie our hands.

What I am concerned about each time an administration changes is that this position is often not filled and confirmed for 7 or 8 or 9 months, and during that period of time we don't have the oversight that we ought to have, and this administration has more oversight and did from the very day that Mr. Noble walked on board prior to—even though he wasn't confirmed, he was here as a consultant. Prior to that, it was very clear from all the bureau heads, myself still sitting over at the Secret Service, knew that there was going to be much closer oversight. I welcome that. I welcome the questions that congressmen are asking all across the committee, so that—but I don't think of any specific legislation, sir.

Mr. WATT. Thank you.

Thank you Mr. Chairman.

Mr. MCCOLLUM. Mr. Bryant, you are recognized for 5 minutes.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman. Welcome, Mr. Secretary. Will you, while you have your blue book out, go ahead and turn to page D-16?

Mr. NOBLE. Page what, sir?

Mr. BRYANT of Tennessee. D-16, and you're welcome, Mr. Director, also. I'm trying to get to the point, Mr. Secretary, to clarify I think going back to Mr. Chabot, the issue of whether or not on the day of the raid of February 28, 1993, how far up in Washington was it that people knew that the element—the so-called element of surprise had been compromised? And this is a diary by time that's an ATF diary. It's in your report beginning about 9:05 in the morning.

We see that Rodriguez departs compound at 9:05 in the morning, talks to Cavanaugh, calls Sarabyn. Sarabyn, who is at the command post, and Sarabyn, Chojnacki and Royster discuss Rodriguez' information and decide to go. So, clearly this illustrates that Rodriguez left, talked to Sarabyn and then Sarabyn, Chojnacki and Royster talked about what Rodriguez told him and then they made the decision to go at that point.

And then, at 9:10, about 5 minutes later, Chojnacki calls the National Command Center in Washington and informs that the operation is a go. Now, what is this National Command Center? Is that sort of the Crisis Center in Washington?

Mr. NOBLE. It's the ATF headquarters office where I believe Mr. Gardener, Mr. Vita, and those are the only two I'm certain were there at that point. I don't recall who else. There's someone else who was there, I just can't recall what the name is. It's like a phone bank, if you will, set up precisely to take information with regard to the raid, yes, sir.

Mr. BRYANT of Tennessee. So in effect that's the Washington point that's monitoring this raid that day.

Mr. NOBLE. That's correct.

Mr. BRYANT of Tennessee. These folks down in the field need to call Washington, they call the command center and talk to one of these two gentlemen and then they can contact you or Mr. Bentsen or Mr. Altman or whatever.

Mr. NOBLE. No, no, you can stop right at ATF. And I know people would love to take this up the chain of command and, unfortunately, the facts aren't there. In an operational matter like that, you would not want civilian oversight. If you could design the model, you do not want civilian oversight to be engaged in an operational matter that close to the time it occurs.

The call, as I understand it, looking at this, went from Texas to Washington, and the critical point is to this day, Mr. Chojnacki doesn't admit, will not admit to this committee or to anyone that he knew that surprise had been lost. So whatever he communicated, if he's consistent with his communication today, he won't admit to this day that he knew surprise was lost.

Mr. BRYANT of Tennessee. So there's no proof, as far as you're concerned, that Washington was ever told that morning before the raid that the element of security or secrecy had been compromised.

Mr. NOBLE. I'm saying the proof is the opposite. The proof is with Mr. Chojnacki making the phone call and protecting himself. Now, there's no doubt in my mind that he will go on, and on, and on,

and on, refusing to accept responsibility for having authorized the raid to proceed and I understand. Part of me understands it, but what he did to Robert Rodriguez, I think, is unforgivable.

Mr. BRYANT of Tennessee. Well, if Mr. Chojnacki would fess up to this, if in fact it occurred, that he did call Washington and tell them that the element had been compromised, what would Washington's obligation have been at that point, whoever answered the phone there?

Mr. NOBLE. You're asking me a hypothetical premised on a fact I know not to be true.

Mr. BRYANT of Tennessee. I certainly can ask you a hypothetical.

Mr. NOBLE. Hypothetically, if a raid commander called Washington and said that the undercover agent left the compound and reported to him in a very nervous fashion that Koresh had dropped a Bible, that he was shaking.

Mr. BRYANT of Tennessee. All right, I see.

Mr. NOBLE. That he looked out the window for the ATF and National Guard. Thank you.

Mr. BRYANT of Tennessee. If you would look at No. 21 there, that document that was given to you, it's redacted on it. And I think Members have this, this copy of the document, No. 21, and I refer you—

Mr. NOBLE. I have it, sir.

Mr. BRYANT of Tennessee. Specifically, it's unnumbered, but paragraph 4, you see here that blank—and I'm going to refer to blank because it's redacted. Blank entered the CP, which I guess is command post, in Waco and proceeded to the radio room. Blank asked the clerk to get headquarters and Cavanaugh at the undercover house on the telephones. Blank informed Vita whom you referred to as in Washington at the command center, informed Vita in Washington that the teams were enroute and that they were almost at the compound.

Vita asked blank why the teams were going so early or going early and blank informed him of Howell's—and I guess that's Koresh, Howell's comments to the undercover, whom I assume is Rodriguez. Vita again asked why they were going early based on these statements and blank said he did not know.

Blank kept the telephone line open between headquarters and so forth. It goes on to say that—it talks about the rest of the raid there. But here very clearly is where whoever blank has talked to Mr. Vita in the headquarters in Washington and informed him of Mr. Koresh's comments to the undercover agent when Mr. Vita asked why they were going so quickly, why they were leaving early.

Mr. NOBLE. May I ask the chairman's indulgence and stop the clock for just a second, let me ask my colleagues back here and then give you an intelligent answer? May I?

Mr. MCCOLLUM. You certainly may.

Mr. BRYANT of Tennessee. Mr. Chairman, while they are talking, may I make this an attachment to the record?

Mr. MCCOLLUM. Certainly. Without objection.

[The information follows:]

RAID DAY FEB. 28, 1993 (SUNDAY) CONTINUED.

-	DAVID JONES RETURNS TO THE COMPOUND AND ALERTS KORESH ABOUT RAID.
8:45AM	TRIB REPORTERS (3 CARS) ARRIVE COMPOUND AREA. TRIBUNE PHOTOGRAPHER, SANCHEZ ARRIVES TSTC AIRPORT.
8:46AM	SANCHEZ CALLS BLANSETT AND REPORTS HELICOPTERS AND POLICE VEHICLES AT TSTC AIRPORT.
9:00AM	SARABYN RETURNS TO TSTC CP.
9:05AM	RODRIGUEZ DEPARTS COMPOUND
-	RODRIGUEZ TALKS TO CAVANAUGH.
-	RODRIGUEZ CALLS SARABYN, WHO IS AT THE TSTC COMMAND POST.
-	SARABYN, CHOJNACKI AND ROYSTER DISCUSS RODRIGUEZ' INFORMATION AND DECIDE TO "GO".
-	SARABYN DRIVES TO BELLMEAD
-	RODRIGUEZ LEAVES U/C HOUSE FOR TSTC COMMAND POST.
9:10AM	CHOJNACKI CALLS THE NATIONAL COMMAND CENTER (NCC) IN WASHINGTON, D.C. AND INFORMS THE OPERATION IS A GO.
9:13AM	SANCHEZ REPORTS VEHICLES AT TSTC WERE STARTING TO LINE UP AS IF TO MOVE.
9:25AM	SARABYN ARRIVES BELLMEAD AND ANNOUNCES OPERATION TO PROCEED.
-	ATF AGENTS BOARD THE CATTLE TRAILERS AND PREPARE FOR THE RAID.
9:29AM	SANCHEZ REPORTS TO BLANSETT, HELICOPTERS ON THE WAY.
9:30AM	SARABYN CALLS CAVANAUGH ON CELLULAR PHONE AND GETS UPDATE ON COMPOUND ACTIVITY AND TELLS CAVANAUGH, THEY ARE ON THE WAY TO MT. CARMEL.
9:35AM	O'FLAHERTY AND BRZOZOWSKI GO TO SPOON RESIDENCE TO SECURE.
9:41AM	SANCHEZ IS PULLED OVER BY ATF AGENTS AFTER TRYING TO PASS THE CATTLE TRAILERS ON FR 2491. HE SEES ATF AGENTS AND CALLS BLANSETT TELLS HIM THEY ARE ON THE WAY.
9:45AM	"MAG BAG" SEARCH TEAM DEPART TSTC EN ROUTE "MAG BAG".
-	MULLONY/MCLEMORE AT FR 2491 AND DOUBLE E SEE, THEN FOLLOW CATTLE TRAILERS INTO COMPOUND, STOPPING AT BUS.

Mr. BRYANT of Tennessee. No. 21. I might also, for the record, indicate that this document No. 21, it was not a part of the report, the blue report. I think it's a document that——

Mr. NOBLE. It's one of the—it looks like one of the photocopies of a memorandum of interview and there were thousands of sheets of the memoranda of interview in this report as Chief Heineman said before is already too long so not all those memoranda of interview are included in this report.

Mr. BRYANT of Tennessee. Right. It appears to have been generated by the investigation and it was disclosed, looks like, as part of the documents from the White House. It has the number on the bottom.

Mr. NOBLE. Looks like we have serious discussions behind my back here, but we'll get to the answer, I'm sure.

Mr. BRYANT of Tennessee. All right, if I might ask while we're waiting?

Mr. NOBLE. Sure.

Mr. BRYANT of Tennessee. Can I switch gears on you?

Mr. NOBLE. Sure.

Mr. BRYANT of Tennessee. When did you start working as a consultant with the ATF?

Mr. NOBLE. I was a consultant with main Treasury and my responsibility included ATF. I was trying to find out the date. I believe it's January 25 or 26 or 27. It was either a Wednesday or a Thursday or Friday toward the end of January and I just don't remember the exact date. It's one of those things I keep saying on my check list I should find out when I first started, but one of those days.

Mr. BRYANT of Tennessee. And I recall you said you worked on Wednesday, Thursday, and Friday.

Mr. NOBLE. My last class at NYU Law School concluded at 10 in the morning. I take a cab to La Guardia, fly down and then take a cab to the office.

Mr. BRYANT of Tennessee. Now, your meeting that you said you had with Mr. Higgins, who was the Director of the ATF at that time, that was just simply a get-acquainted meeting?

Mr. NOBLE. Well, I don't know if Director Magaw would admit it, but once they learn that there's someone who might occupy the position, it travels like wildfire. So I went to pay courtesy calls on all the Directors. John Magaw was Director of Secret Service; Steve Higgins, ATF; Brian Bruh was FinCEN; George Weise was not yet nominated, so it was Michael Lane; and then my office Directors today.

Mr. BRYANT of Tennessee. Did you meet with other people in Mr. Higgins' office? I mean, did you go to his office or did he come to yours?

Mr. NOBLE. I went to his office. I wanted to show them that I recognized that they were the power center and that I was going to be respectful of them and the experience they had, so I went to their office. And Mr. Higgins' secretary or administrative assistant——

Mr. BRYANT of Tennessee. I think they're leaving now.

Mr. NOBLE. That worries me—introduced me to Mr. Higgins and then I went in his office and had a one-on-one.



Mr. BRYANT of Tennessee. Were other people brought in——

Mr. NOBLE. They were not.

Mr. BRYANT of Tennessee. As part of Mr. Higgins' staff?

Mr. NOBLE. They were not. None of the offices I visited, for some reason.

Mr. MCCOLLUM. Mr. Bryant——

Mr. NOBLE. Wait. Director Magaw, I met with him privately in his office then you took me to a staff meeting.

Mr. MCCOLLUM. Mr. Bryant, your time has expired. They are still trying to figure out this document. When the appropriate time comes, Mr. Noble, you will be able to answer the question. But I cannot let Mr. Bryant ask the question at this point.

Mr. NOBLE. OK.

Mr. MCCOLLUM. And so I'm going to yield time now to Mr. Condit.

Mr. CONDIT. Thank you, Mr. Chairman.

Mr. MCCOLLUM. You have 5 minutes.

Mr. NOBLE. Thank you, Mr. Chairman.

Mr. CONDIT. Thank you, Mr. Chairman. Mr. Secretary, Mr. Director, nice to have you here today and I know it's been a long day and I'll try to be quick. I'm still a little unclear about the investigative part of this, the process by which you folks do your internal investigation if you have a shooting, an officer goes down or what have you.

It's my understanding that the Texas Rangers did an investigation, that the Justice Department did an investigation. Do you not have an internal process by which when you have an incident, a gun has been fired that you automatically go and investigate?

Mr. NOBLE. The standard. I'm sorry, sir.

Mr. CONDIT. I am sorry, go ahead.

Mr. NOBLE. The standard operating procedure for ATF at the time was following a shooting, there would be a post shooting review. They began the post shooting review process and during that time two things happened: One is the assistant U.S. attorney in charge, Mr. Bill Johnston, made what I thought was a right decision and concluded that if ATF agents were the case agents for this murder investigation, then they would be accused of a whole host of misdeeds which might make the case less strong than it otherwise would be.

Therefore, Mr. Johnston asked the Texas Rangers whether they would agree to be special deputized U.S. marshals and conduct a Federal criminal investigation.

Now, at the same time this is going on, there are reports in the newspaper and on the—in the media and, in fact, I believe one agent went on TV saying that we knew, we, being the ATF agents involved in the raid, knew that the surprise was lost and went forward nonetheless and ATF headquarters was putting out the story that they didn't know that surprise was lost. Therefore, if we had permitted ATF to continue its post shooting review, as it ordinarily had, then that critical fact of what did you know when, coupled with agents saying there's a coverup going on would have made that a dangerous thing to permit to continue.

And for those reasons, ATF was told to discontinue the post shooting review and the Texas Rangers began their criminal investigation.

Mr. CONDIT. Well, is that part of the procedure if you think there is a problem with integrity, you automatically move to another agency?

Mr. NOBLE. Absolutely. Well, let me put it this way. I say with the exception of the FBI. I think the FBI conducts its own internal investigations and has a component that does it nonetheless. But while I was at Treasury, while I've been at Treasury, if any of my components are accused of integrity violations, then I would pull it out of that component and have one of my other investigative components conduct the investigation or have the IG conduct an investigation.

Mr. CONDIT. So this would be one where you would say integrity was challenged, not necessarily just based on fact.

Mr. NOBLE. Right.

Mr. MAGAW. Congressman, an example of that is the Good Old Boy Roundup in Texas. We were the first Bureau to start working that case and as I developed it, I saw that in addition to ATF being involved that others were involved and I wanted to make sure that nobody would look back and look at this as a tainted investigation.

I'm satisfied we would do a very good one. So I went over to see Mr. Noble as soon as I had a reasonable amount of information and it's his judgment it should be turned over to the Inspector General so that has been done. So that's an example of what we would do.

Mr. CONDIT. Am I correct the Texas Rangers did their investigation, the Justice Department?

Mr. NOBLE. They did.

Mr. CONDIT. The Treasury Department then what?

Mr. NOBLE. Pardon me?

Mr. CONDIT. The Treasury Department as well?

Mr. NOBLE. We—the Texas Rangers, within a matter of days and weeks of the raid, conducted, I believe, 82 interviews. They were tape-recorded and transcribed. The Treasury Department conducted over 500 interviews. We were all able to conduct investigations the way we thought were appropriate.

Mr. CONDIT. And each investigation, Texas Rangers, the Justice Department, the Treasury Department and you did not do your own internal, do you think they were all accurate?

Mr. NOBLE. Do I think what, sir?

Mr. CONDIT. What are the findings of the three investigations? Would you agree with—

Mr. NOBLE. I believe what we did was a comprehensive, honest look at what happened. We turned the memoranda of interview over to the trial lawyers involved in the prosecution of the 11 defendants, 8 of whom were convicted and I think 6 of whom got 40 years plus. So I believe the Treasury Department's investigation and the criminal prosecutions confirm that what is in here is accurate and what came out at trial is accurate and, unfortunately, what Mr. Chojnacki and Mr. Sarabyn and Mr. Hartnett continue to say is not the truth.

Mr. CONDIT. Did the Justice Department encourage you not to do your own internal?

Mr. NOBLE. Absolutely not. If they had, I would have referred it to someone for criminal prosecution.

Mr. CONDIT. Mr. Magaw, you want to respond to that?

Mr. MAGAW. Well, back in time, I was sitting at the Secret Service as the Director and Mr. Noble, I know, confided in me one day as to how to conduct this investigation so that it would be looked at by all when it was finished to be a valid one, and we decided that ATF should not be involved at all and we talked to Steve Higgins and he agreed with that.

I then selected personally as the Director, personally went through our roster and selected seven outstanding people from the Secret Service, never realizing I'd be in this position today, and I had them all in the Director's office and I said you are under—you're taking on a tremendous task here. You have to let the chips fall where they may. And if anywhere along the way you run into something that somebody's not allowing you to pursue, I want to know about it immediately.

And I interfaced with the leader of that group, Louis Merletti, who you saw testify here in the last couple days, and we checked—he checked with me almost weekly and there was never a case where they were not allowed to pursue anything that they came about. So I—I believe the report—I also look back as a young agent at the Kennedy investigation and there are Secret Service agents today who will look at the Warren report and say, well, this isn't quite the way it happened. So there's always going to be that and I believe that's what we have here more than anything else.

Mr. CONDIT. Thank you. I appreciate it.

Mr. MCCOLLUM. Thank you, Mr. Condit. Mr. Souder, you are recognized for 5 minutes.

Mr. SOUDER. I want to note for the record that the conversation with Mr. Vita is not in the time log and I hope that will be in the explanation as well because that's the type of thing that leads people to wonder why the Treasury wouldn't have included phone calls to itself in Washington when you were doing an investigation, and there may be a good explanation. I know you're working at that. But if you will include that. It's on page D-16, this memo says 9:10 to 9:15. There's no such phone call reported in the document. Also you made a reference—

Mr. NOBLE. I'm sorry, I'm not sure. I want to make sure we get it right. What is the omission?

Mr. SOUDER. The phone call to Washington to Mr. Vita.

Mr. NOBLE. There's a 9:10 entry that says Chojnacki calls the National Command Center in Washington, DC, and informs the operation is a go. What is missing, I'm sorry?

Mr. SOUDER. My understanding is—and that's what I would like clarified and the question is, is that this call?

Mr. NOBLE. OK, we'll check into it, yes, sir.

Mr. SOUDER. Because if that's the call, then it would have been helpful to note who it was to. But if it's not the call, then we need to identify who the call was to.

Mr. NOBLE. Yes, sir.

Mr. SOUDER. Otherwise, there will be a whole cottage industry that develops around that. Also, you made a reference to reduction in your office and that not knowing how oversight hearings are

going to be, I would suggest that whenever you send two cattle trailers of agents into a raid and with helicopters that probably you ought to know what's going on, particularly if 4 agents get killed and 21 children, you will probably have some kind of oversight.

I don't think we're expecting you to know every little detail of every raid, but this was the largest raid in the ATF history and that's why there are so many questions with it. I also——

Mr. NOBLE. I don't understand your comments, sir.

Mr. SOUDER. You made a comment about the size of your office, you're getting a 30-percent reduction, you can't watch over everything. We are not talking about everything in your office here.

Mr. NOBLE. You don't need to impress upon me the loss of four agents' lives, sir, and I resent that. I resent that.

Mr. SOUDER. You dealt with in a very flippant way to our oversight hearing and I was responding.

Mr. NOBLE. I resent that. I just want the record to be absolutely clear on this one point. Not you, not anyone needs to impress upon me, sir, about what happened to four agents on February 28, 1993, near Waco, TX. So I made no flip remark.

Mr. SOUDER. Don't you lecture us about what our oversight authority is and talk about the cutting the budget and how that makes it difficult. Obviously, we both know——

Mr. NOBLE. I was asked a question by Mr. Watt.

Mr. SOUDER. It's my time.

Mr. NOBLE. I was asked a question by Mr. Watt about what we can do legislatively.

Mr. SOUDER. It is my time. I was not trying to insult your integrity. I was saying when there is a large event such as this, of course there is going to be oversight whether or not your budget is reduced. You know that, I know that.

Mr. NOBLE. Sir, it makes a difference. If I have one-third less people there, that means everything I do, I do less thoroughly. Maybe I will miss, maybe I just won't read the memo.

Mr. SOUDER. It was the largest raid in history. It has nothing to do with this hearing and you know that.

Mr. NOBLE. I don't know that, sir. I take issue with what you're saying.

Mr. SOUDER. My question to Mr. Magaw, I have a couple questions. What percentage are alcohol, tobacco arrests in your agency as opposed to gun? Do you know just ballpark?

Mr. MAGAW. It would just be around 5 or 6 percent.

Mr. SOUDER. What percentage of your arrests are convicted, people you arrest? Is it a high percent?

Mr. MAGAW. In the 90's, in the 90 percent. It's somewhere around 96 or 97 percent.

Mr. SOUDER. Are most dangerous, dangerous in the sense of imminent danger or potentially dangerous?

Mr. MAGAW. This is what I'm addressing our priorities and it's one of the things that we're looking down the road on. I want you to work on cases that are violent offenders, the drug traffickers, the gun traffickers and those that are—they're committing the violent offenses throughout our neighborhood. Those are the key cases that we work. And that's what we're putting our attention toward.

Mr. SOUDER. One of the things that I really appreciate about your demeanor and how you have handled yourself here is you're very soft spoken. I think you seem very responsible. I think with all the tension in the country with ATF that's very important right now. And I don't think any of us, particularly on the Republican side, want to see a bunch of flower children going into these things, but we do want to make sure there's caution. And I was concerned in your statement where you said, I think it was about the fourth page you said down further that the image of ATF personnel as agents looking for a fight is utterly at odds and then the paragraph before your speechwriter—and I don't think they quite meant it this way, said your central mission was fighting dangerous criminals.

Part of your responsibility, and I think you're trying to communicate that to the agency and it's one of the things we want to see happen is much more caution, much more concern about what Mr. Blute is raising about whether they're hot dogging or too aggressive.

At the same time, we're not asking them to be passive going in because it is dangerous situations. But I think the terminology is important. Many of these are not criminals in the sense they have not been convicted yet and that needs—that is a fine line that we need to keep in mind in American law no matter how evil we see David Koresh.

I have another question, too, and that is that according to the report, it says that the reason the agents didn't go in was because they were concerned about a siege and the mass suicide. One of the questions that I've had, we are going to get into the fire and other things, is is that the first raid, in fact, didn't lead to fire. There was no evidence of gas being spread around, no evidence of mass suicide in the compound, and it, in fact, even in the second, until the tanks started to knock down the walls and there was some exchange going on as the gas was coming in did the gasoline start to get spread on that.

Now, the core question that I have with that is that this report suggests that the main reason was the siege question. Yet another document, if that could be distributed to you, is 00019385 suggests that the reason that ATF did not go in was because you didn't have the negotiators or expertise as opposed to the mass suicide question.

Your very—Mr. Magaw, your very point that you don't think you can do these things alone anymore acknowledges that, but why do you think the report said the reason you didn't go in was because of mass suicide and yet this document suggests it's because of the siege.

Mr. MAGAW. I'm not your best witness on that report. I came after that.

Mr. SOUDER. Mr. Noble, do you know what—

Mr. NOBLE. What is this document that I've been handed, sir? Can you tell me its source?

Mr. SOUDER. It's a Treasury report. I assume it's a similar one of the interviews.

Mr. NOBLE. I'm really sorry, but would you mind if we try to find out the answer to that? I would simply say that the report

catalogued and listed the reasons which ATF had for why it concluded that a siege would not work and why the absence of negotiators—I just will have to think about this. I just—I'm hearing it for the first time now, so if you could give me a moment, maybe after everyone concludes I can——

Mr. SOUDER. That's what I'm——

Mr. NOBLE. There is now one from Mr. Bryant and one from you, sir.

Mr. SOUDER. Right. And the core question here is that was the thrust the mass suicide because there wasn't evidence that there was going to be a mass suicide until the action started, not under ATF but under FBI, and there wasn't in the ATF raid any attempt at mass suicide and yet that was what really the report stresses was this document.

Mr. NOBLE. That was ATF's reason, one of ATF's reasons for why a siege didn't occur was the risk of mass suicide. Another reason was that because they had .50 caliber rounds, the perimeter would have to be so great a distance.

Another reason was they had provisions and munitions—provisions to last them for several months. So there were a number of reasons why the siege option was—and then there was also the destruction of evidence risk. But we'll find out that answer.

Thank you, sir.

Mr. SOUDER. Thank you.

Mr. MCCOLLUM. Mr. Noble, are you ready to answer those other questions of Mr. Bryant, I guess, are you? If not——

Mr. NOBLE. Do you know, Mr. Chairman, whether there's going to be another vote or a break at any point?

Mr. MCCOLLUM. We're going to have it coming right up. If you need that time, you're going to get it. If we can, Mrs. Thurman, if you are ready to go, we would have time for 5 minutes of questions, so why don't we do that. I yield to you 5 minutes.

Mrs. THURMAN. OK. First, let me yield to the gentleman from North Carolina, Mr. Watt.

Mr. WATT. I thank the gentlelady for yielding, and I just want to take enough time to make it absolutely clear to Mr. Noble that I did not think that his response to my question was flippant at all.

Mr. NOBLE. Thank you.

Mr. WATT. I thought it was thorough and in the spirit in which I offered the question and I appreciate it.

Mr. NOBLE. Thank you, sir.

Mr. CONYERS. Could I ask one question, please?

Mrs. THURMAN. I will yield.

Mr. CONYERS. Are the witnesses in some stage of duress? Should we recess these——

Mr. NOBLE. I am. I've been crossing my legs, but it's not visible for some time now.

Mr. CONYERS. Well, you know, I think, Mr. Chairman, they've only been here since 3:30.

Mrs. THURMAN. Reclaiming my time.

Mr. CONYERS. Don't you think that we might be able to accomodate the witnesses in their requests, while we take care of our duties?

Mr. MCCOLLUM. Well, we are. We were definitely going to accommodate them.

Mr. NOBLE. I can go 5 minutes longer.

Mrs. THURMAN. Can I reclaim my time here so that—I mean, thank you. Mr. Noble, Mr. Magaw, one of the things that my constituents—

Mr. SCOTT. Mr. Chairman, can we break at this time? The gentleman has already indicated that he is in some duress.

Mr. MCCOLLUM. We will take a break. We will come back and let Mrs. Thurman have the whole time here as we need to have it. We will recess until 5 minutes after the last vote.

Mr. CONYERS. Thanks for your generosity, Mr. Chairman. You are a wonderful person.

[Recess.]

Mr. MCCOLLUM. This joint hearing of the subcommittees on the Waco matter will come to order. At the time that we had our recess commencing a few moments ago, we were ready for Mrs. Thurman to have her 5 minutes and I will give you your 5 minutes now. You may take it.

Mrs. THURMAN. Thank you, Mr. Chairman, and I appreciate your indulgence.

One of the questions that's been going on all day on this dynamic entry, I'm just—I'm curious in training, when they're being trained in this area, I mean isn't dynamic entry the one thing that they talk about as it was secrecy or the element of surprise or however you do that? I mean, shouldn't they just know that? I mean, does it really have to come from a higher command? I mean is that not a part of their training to know that that is supposed to do—that's what's supposed to happen? I mean, I am just curious to know the answer.

Mr. MAGAW. When you're referring to a dynamic entry, if they don't know it, they should know that that is knock, announce yourself, give them a reasonable time to open the door and if you—if they don't get it open, then you go on in because evidence may be destroyed or moved or somebody arm themselves. And clearly surprise is part of that and that's why you do it. So that you—it's the same thing. People come up and knock on the door and sometimes you get shot straight through the door if they're not smart enough to stay to the side of the door.

So it's—a dynamic entry clearly is one of surprise, to catch them before they can either destroy evidence, if it's the case of drugs, or if it's in the case of weapons, before they can arm themselves.

Mrs. THURMAN. So they would know that, I mean there should be no question in their mind that if, in fact, that is—that surprise is taken away that they should be looking at either, one, an alternative, which was not available to them, or abort that particular procedure at that time.

Mr. MAGAW. That's—that's correct, and that happened here in the District of Columbia just a few weeks ago when we were going to—you may have read about it in the paper, we caught a lot of heat, ATF messes up again and an announcement got out.

Our forward teams were out the night before and they saw things they didn't like, and as a result they realized by seeing what they didn't see and were used to seeing that something was up.

Well, it showed later in a couple of days that a city official unintentionally let the information get out, it was on the radio. So our leader, with about 180 or 90 people, all different departments out at Andrews Air Force base being briefed at 3:30 in the morning and said we're not going. And so it does happen and you have to have that element of surprise.

Mrs. THURMAN. And I would think, Mr. Magaw, when somebody, when you've been training them and they're in this kind of a situation that there is a certain amount of responsibility that they take individually as being in the position that they are that we give them that leeway to make that determination.

Mr. MAGAW. You—you have to give them the leeway. That knock and announce, sometimes that is a very short period of time. If they hear people scrambling around behind the door or they hear things that are just—that would give them—give them concern. So you don't want to put too many tight binds on them.

Mrs. THURMAN. Let me do a followup with that, too, because one of the issues that I have heard many times, that we in public office when we're first sworn in, we're sworn in to uphold the Constitution of the United States, and the constituents that I have are certainly concerned about the Constitution and, in fact, even today you mentioned the second amendment in your opening remarks.

Ms. Lofgren mentioned the first amendment. Mr. Scott mentioned the fourth amendment. I think in some time during the hearings, Mr. Conyers has actually talked about somewhere in the 14th amendment. We've heard the issue with the Good Old Boy Roundup.

What do you do in your agency to make sure that your officers know and understand the rights of the American people?

Mr. MAGAW. In their training in Georgia when they first come on, there's a lot of time spent in terms of the constitutional rights, how you perform your duties and making sure that you recognize and uphold those constitutional rights. They're reminded in their refresher training courses. Any time you have a major court case where somebody has made a mistake and caused a problem along those lines, we make sure that it's out there, it's shared with them. And so that's—that's the way we do it.

In terms of their practical application of our special response teams and things of that nature, all of those items are covered so that we are not violating the Constitution.

Mrs. THURMAN. Is there disciplinary action at all taken or is it on an individual basis—if we uncover that if it, in fact, has not happened?

Mr. MAGAW. Well, there is disciplinary action taken if they violate those guidelines. It depends on the certain circumstance and exactly what happened. So you have to treat them as individual cases.

And one of my concerns since coming to ATF and what my employees have told me is that they don't perceive as they sit out there in the field that there's equal justice in terms of penalty for somebody doing—committing a violation and somebody of a higher authority committing a violation. They don't get the same penalty.

So I've set up a review panel that has to review every one of these cases that come in and they review them faceless. They re-



view them on the actual facts and what we have done in the past and what is fair and like judgments. So that should be corrected within the next—it's operational as of August 1.

Mrs. THURMAN. And I appreciate that response. And at this time, I know that the gentlelady from Texas, I'll yield the balance of my time.

Ms. JACKSON LEE. I thank the ranking member and the gentleman from Florida and I'll try to focus on just one point, Mr. Noble, and I'll ask, put it in the form of a statement and then a question.

And Mr. Magaw, you can add to the answer, if you would, please, because you came from the Secret Service. Sometimes in the zealousness of defending our staff and those we work with in our departments, people assume bias.

Mr. Noble, you have been a prosecutor. And my question would be do you have any fear in prosecuting, if you are a prosecutor or previously you may have experienced police abuse cases or any fear in ferreting out any violations of the law that may come to your attention along with the Good Old Boy Camp or any other aspects, can you step aside from the personal feelings, the great tragedy, the loss and be able to ferret out, to purge out, and if you stood in a prosecutorial posture, could you in good conscience prosecute those who are law enforcement officers who would violate the law?

Mr. Magaw, you may answer it in the terms of how you would—I would like Mr. Noble to answer first and then, Mr. Magaw, you might answer it in terms of how you would discipline and will you be fearful of doing so because of your colleagues. Thank you.

Mr. NOBLE. I can tell you that as a prosecutor for 4 plus years in Philadelphia, I never turned down a case. There were cases which I believed didn't merit prosecution and I said so. I never indicted a person whom I didn't convict and I never took someone to trial or had a trial where the person wasn't convicted of something.

I prosecuted public corruption cases, organized crime cases, drug trafficking cases. There wasn't a case I was afraid to prosecute despite the fact that I was threatened and attacked and spat upon.

Now, it doesn't mean that I don't feel emotional when I see some of the things the victims go through, but I know how to investigate a case and I know how to prosecute a case.

Mr. MCCOLLUM. Thank you. Your time has expired, Mrs. Thurman.

Ms. JACKSON LEE. Mr. Magaw was answering the question as well.

Mr. MCCOLLUM. Mr. Magaw, sure.

Ms. JACKSON LEE. Thank you.

Mr. MAGAW. It was my policy at the Secret Service, it is my policy here that if, when an inspection team is out looking at an incident or complaint, if they find anything that is a violation of law, I expect them to take it to the U.S. attorney as if they would any other case and present it, not presenting it in any tone that they would want it declined, but presenting it based on the facts. And when they come back with the U.S. attorney's opinion, then I have no problem moving forward with the prosecution.

Absent of that, I have no problem and I try to make sure and I think my past will have shown that I take fair but forceful action in all employee matters.

Mr. MCCOLLUM. Thank you. Thank you, Mrs. Thurman. Thank you, Ms. Jackson Lee.

Mrs. THURMAN. Thank the Chairman.

Mr. MCCOLLUM. Mr. Noble, are you yet prepared to respond to Mr. Bryant's inquiries about this memorandum of February 19, 1994, which you were looking into?

Mr. NOBLE. Yes, I am prepared, but I will qualify my answer that I am not thinking as clearly now as I was several hours ago, so if I could amend it in writing, I would greatly appreciate it.

If I can direct your attention to page D-16. We see an entry on page D-16 at the 9:10 a.m. mark that says Chojnacki calls the National Command Center in Washington, DC, and informs the operation is a go. During that phone call, Mr. Chojnacki did not say that—did not say that Mr. Rodriguez had come out of the compound with any particular information.

If you turn to page D-17, you will see at the entry mark 9:55 a.m. It says, NCC is notified by the TSTC command post, warrant executed, agents receiving gunfire. If you look at the document marked 12953, the first, second, third full paragraph, that conversation captured in that paragraph reflects the phone call that occurred at 9:55 a.m. and these entries were entries that were generated based on telephone records so they are correct as listed.

Mr. BRYANT of Tennessee. Can I follow up?

Mr. MCCOLLUM. You may follow up to the extent of getting clarification, Mr. Bryant. I think that was part of the rules of the game at that time. In fact, you still had a minute left when Mr. Noble asked to have that time.

Mr. NOBLE. At least a minute.

Mr. MCCOLLUM. So go ahead.

Mr. BRYANT of Tennessee. Mr. Secretary, again I understand it is late, but I'm still concerned about the telephone call that occurred prior to the raid. That's in paragraph—again, in paragraph 4 on that document 12953. It is apparently a call that Mr. Chojnacki did not make because he's referenced early on. This is from some unidentified—

Mr. NOBLE. That's correct. That's correct.

Mr. BRYANT of Tennessee. And he made the call to indicate that Mr. Howell, Mr. Koresh, what he told Mr. Rodriguez. I still do not see that reflected in your log.

Mr. NOBLE. No, sir, if—if you look at 9:55 a.m. entry, that is the phone call that's reflected in the third paragraph of this memorandum of interview.

Mr. BRYANT of Tennessee. OK.

Mr. MCCOLLUM. Excuse me, that's the third full paragraph.

Mr. NOBLE. I'm sorry.

Mr. MCCOLLUM. That is the one Mr. Souder was asking about, I recall, I believe, right?

Mr. NOBLE. Am I looking at the right one?

Mr. MCCOLLUM. No, you're looking at the right one. Both Mr. Bryant and Mr. Souder asked you about it.

Mr. BRYANT of Tennessee. It's the third full paragraph.

Mr. NOBLE. Right.

Mr. BRYANT of Tennessee. Look at the paragraph above there, if this is chronological, it talks about 9:10 to 9:15.

Mr. NOBLE. And what I'm telling you is I talked to the agent who interviewed this person. The agent's name is Robert M. Gadison. And the time sequence between the paragraph that begins with the blackout portion and then entered is not immediately following in time like 9:16 what preceded the previous paragraph.

Mr. BRYANT of Tennessee. Well, there still seems to be some confusion. Perhaps we can straighten it out.

Mr. NOBLE. I'm telling you that Mr. Vita has been interviewed. We read the report of Mr. Vita's interview and it says that he received a phone call after the raid had begun. So that has been able—we have been able to confirm that this is what this paragraph is referring to with the blanked out agent's phone call to headquarters that it happened afterwards.

And what happened is the agent who entered the command post made a call to Washington after Mr. Chojnacki had already departed and flown toward the compound. The raid began and during the phone conversation they hear Cavanaugh repeatedly calling for the helicopters over the radio. So what I'm telling you is that that paragraph, it occurred at the 9:55 Texas time phone call entry.

Mr. MCCOLLUM. Just for last comment on clarification, Mr. Noble, and I know you're digesting this and you said it's late yourself, but in that third full paragraph, it would appear that the person who is receiving this call is saying that he's aware, at that point, that Rodriguez, the undercover person referred to there, had been informed of Howell's comments, et cetera. So in other words, they had learned about it at that point.

That was not reflected as an entry at 9:55 in your log. Now, whether that means anything or not, I don't know. I'm not disputing your word that that's what that call is. But I think you would agree with me—

Mr. NOBLE. Absolutely. Your clarifying or elucidating what additional language we could have included at the entry for 9:55, I simply wanted to make clear and the clarification that you have made is worth—worth noting. It took us a while to figure this out so it is a good point.

Mr. MCCOLLUM. Was the 9:55 entry essentially the first report that came back to Washington that clarified that Rodriguez—that Rodriguez had made some report?

Mr. NOBLE. That's right. And the fact that there was—that the raid had gone back, that's right, both of those details.

Mr. MCCOLLUM. At the same time, 9:55?

Mr. NOBLE. Correct.

Mr. MCCOLLUM. Are you satisfied, Mr. Bryant?

Mr. BRYANT of Tennessee. I believe I am.

Mr. MCCOLLUM. Thank you very much, Mr. Noble. Sorry about the delay. Then Mr. Barr, you are recognized for 5 minutes at this time.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Magaw, one of the very serious problems that I see in this is the role of the early contacts with the media, and that is preraid

on the 28th. And I know that's dealt with extensively in the ATF Treasury Department report.

But I was a little bit disappointed in your written statements on page 10, you address the question of the media but more in the context of the ability of the Bureau to respond accurately and effectively to the media. The problem that I see is not so much the ATF's ability to respond effectively and accurately to the media, but preraid leaks to the media.

I think the lady this morning was a little bit disingenuous. I think in the context as detailed in this report of the days leading up to the raid, it was very clear that there was a great deal of information out there. Whether or not they were—the media was tipped off by somebody in ATF or not, we'll probably never know. But I think it's very clear that when she made her call that Saturday—Sunday, or Saturday evening, whenever it was, that that certainly didn't help maintain the secrecy of it.

And I would hope that ATF would be coming up with some very clear and very strict guidelines on preoperation contacts with the media. Because I think very clearly, and I think Mr. Hartnett made this point very emphatically, that this may be one of those situations where perhaps if leaks had not occurred, maybe this tragedy would not have occurred.

Mr. MAGAW. May I make comment on that, if I could?

Mr. BARR. Yes, just very briefly, please. You know how limited in time we are here.

Mr. MAGAW. The operation security—the operation security officer that I told you we have working full time now, that's going to be their responsibility. Each of these groups, like the press group, is rewriting those. And we want to wait until that Op. Sec. person has a chance to approve them and we all agree, but we are on that item, that's very serious.

Mr. BARR. OK. Because I know that was a problem that I saw with ATF when I was in the prosecutorial arena.

Mr. Noble, following up on a line of questioning that Chairman Hyde and you or a dialog that you and he engaged in earlier with regard to the ATF shooting review, I'd like Mr. Bush—there are a few documents here, you probably already have them, but since I am going to refer to them specifically, Mr. Bush will give you those.

One is a memo dated September 17, but it refers to a March 1, 1993, incident. Then there's the April 9, McNamara to you memo. And then there is the April 14 memo from McNamara to John Simpson.

The first of these is the entry on March 1, 1993, and this is one I think that Chairman Hyde referred to: The ATF begins its shooting review which is entirely appropriate, I believe, immediately it's apparent according to this note that the stories do not add up. And then comes the, I think, very, very strange entry concerning stopping the interviews and taking no more notes.

Then we have the April 9 memo, which deals with press releases. And there I think that's somewhat different, and I think it's not entirely wrong to make very clear that discussions and statements that are released, both agencies need to be very careful so that in their public statements they don't say something that could prejudice an investigation or prosecution.

But then the April 14 memo is somewhat problematic again in that it says very clearly the DOJ is directing that no further interviews or discussions with any participants who may be potential witnesses be undertaken. It very clearly states that they do not want to generate any additional Jencks, Brady, or Giglio material, and then it goes on from there: We have had, as I presume you're aware, some discussions with other witnesses on 2 or if not all 3 days last week concerning whether or not this is indeed either standard or appropriate procedure. I don't think it's either, in my experience as an U.S. attorney.

And Mr. Johnston, the assistant U.S. attorney in Waco when he was asked about these, he agreed with that, that it was not standard operating procedure. And I just wanted to clarify that.

Do you think it is in fact standard operating procedure that once a shooting review has been initiated, very properly, where there has been a shooting, particularly one as serious as here, that it's—that it's appropriate or standard for the Department of Justice to explicitly state we don't want this to proceed forward because there might be, heaven forbid, exculpatory evidence created, and there are to be no further interviews or discussions and no notes are to be taken?

Mr. NOBLE. At no time during the investigation by the Treasury Department of the Waco tragedy did any Justice Department official tell me that I or my employees should not or ought not to disclose any Brady material to them or to anyone. So that is my understanding, based on personal conversations I had with—

Mr. BARR. I'm not sure that has to do with disclosing Brady material, that's not my question. This has to do with the generation of potential Brady, Giglio, or Jencks material, and the Department of Justice through these memos is directing that no further evidence be gathered in the shooting review.

My question is not about disclosure within the executive branch, but is that sort of directive to those conducting a shooting review, which is a very serious incident, standard operating procedure or indeed is it appropriate?

Mr. NOBLE. I believe it is quite appropriate for the Justice Department when it's prosecuting very serious crimes as those with which the 11 defendants were accused of committing, to make certain that if there is a complementary investigation by another component, that that investigation not jeopardize the criminal investigation in a lawful manner.

And what I'm saying, sir, is nothing in my experience at the Justice Department, nor my experience at the Treasury Department, would lead me to believe that the Justice Department would ever want the Treasury Department not to disclose or uncover or reveal Brady material. I see a bright line distinction between Brady and Jencks.

Mr. BARR. You don't think that these memos by their explicit terms do precisely that?

Mr. NOBLE. I do not, sir. And I would tell you that we conducted over 500 interviews. The Texas Rangers conducted 80-plus interviews. At no time were we not permitted to interview anyone we wanted to interview, and the Justice Department was quite supportive of our requests.

Mr. MCCOLLUM. Mr. Barr, your time has expired.

Mr. SCHUMER, you're recognized for 5 minutes.

Mr. SCHUMER. Thank you, Mr. Noble.

I know it's been a long day for you, but I think it's been a worthwhile day. Because both with the previous panel and with this panel, the report that Treasury did hold up extremely well.

In fact, the only real dissents we've heard from it are from people who were criticized in the report. The most outrageous of which was Mr. Hartnett who talked about a coverup, and yet first he didn't point out what was covered up; second, his main criticism was that there were no explicit instructions from Treasury down to ATF—from the top level—sorry, from the top levels of ATF down to the folks in the field, to call off the raid if there were a surprise.

The irony of that, and I wish Hartnett were back here, I just didn't get a chance to question him after this, is that Hartnett himself could have made that explicit. So he's blaming the report for a coverup, and yet at the time he could have said that. And so I don't consider his words very dispositive, particularly—and then when you look at the main critics of the report, there may have been a little fact left out here or not, but it's extremely comprehensive. It didn't talk about what, you know, an agent's favorite color was, but it had all the material facts in it, none of which were in dispute.

And a few people here tried to bring out, well, it didn't have this, this or this, but those are not material facts. The only people who disputed it in the long amounts of questioning we have had, the only witnesses who disputed what was in the report, were people who were criticized in it. Namely, Sarabyn, Chojnacki and particularly Hartnett. And I have to say I found Hartnett's performance—

Mr. CONYERS. Dismal.

Mr. SCHUMER. Dismal is a good word. I was going to use another D word, despicable, but maybe I wouldn't go that far. It was certainly dismal. And I find it sort of strange, because you could see within him, he wants to defend the agency, but I guess he felt so badly about his role and the fact that he was severely chastised, that he wasn't.

But the overall point I want to make is your report holds up real well. And I would say, for instance, by way of contrast, if the FBI had issued—had done what you did and went for outside review and was as comprehensive at Ruby Ridge, it would be in a lot better shape than it is today.

My—I'd like to just go back and reiterate Mr. Barr's point. He keeps bringing this up, and I don't agree with him and I think we've made it clear all along.

Just to reiterate, is it usual procedure, it doesn't happen every time but it happens rather frequently, that to not jeopardize an ongoing criminal prosecution, Justice will tell an agency, Treasury, ATF—they've done it in the Whitewater hearings a few times, the prosecutor has—to not do certain things because it might jeopardize the criminal case which is paramount? Is that standard procedure? Have you heard of it many times?

Mr. NOBLE. I would say it's not only standard procedure, but if you think about what happened here, here you had an agency that

was conducting a post-shooting review, and was being dishonest with the results of the review. And you have Justice not saying stop the review, but saying let's shift it from ATF to the Texas Rangers.

Mr. SCHUMER. Right.

Mr. NOBLE. So we just had to go from party A to party B.

Mr. SCHUMER. I can imagine the critics if ATF were continued, on the issue of the guns and whether they were made into automatic guns, their whole beef is that there was an ATF agent, a Treasury agent, who looked at the guns first. You know, they want it each way.

On the one hand, to have the agency involved investigating immediately thereafter is very bad, can lead to coverup or whatever, and on the other hand, when an impartial agency comes in or a different agency comes in, that is very bad, too. You can't win with some of the critics, I suppose, Mr. Noble. But you're used to that.

And Mr. Magaw, let me just ask you with your years of experience in both the Secret Service and now in ATF, again, is it in any way unusual, a deviation from the norm, apart from being apart from the standard operating procedure, for Justice to come in and say, please, halt your preliminary investigation, we don't want to jeopardize the criminal investigation, we're going to do it?

Mr. MAGAW. Not at all.

Mr. SCHUMER. Not at all. OK. I'm not going to get any further into my views of why that point is being pushed.

And let me ask you another question here. Mr. Noble, we've heard from members on both sides of the aisle, and I believe this, I believe this of many of my colleagues on both sides of the aisle, that we want to use these hearings to strengthen Federal law enforcement, and I think they mean, although maybe they wouldn't say it explicitly, to strengthen ATF.

I certainly believe that, to strengthen it, not to tear it down. And they want the hearings to strengthen the public image of Federal law enforcement, not tarnish it.

From your perspective, could you tell us what you think Congress can do from here to be constructive rather than destructive to law enforcement agencies that you represent here?

I'd like to ask Mr. Noble and Mr. Magaw to answer that question.

Mr. NOBLE. The first thing Congress can do is that when an agency like a Department of the Treasury and a Bureau like ATF engages in the kind of self-examination that produced this 500-page, very thoughtful, very comprehensive report, and where no one, where no one other than people criticized challenged it, in the core accuracies it contains, that we can get a pat on the back instead of having our parents listen on television or see on television where someone says there was a "coverup" or I engaged in a coverup or the Department engaged in a coverup without showing what fact was missing or not disclosed.

Mr. SCHUMER. Mr. Magaw? You get that pat on the back from most of us. There are a few people who have been irresponsible with the word "coverup," but you get that pat on the back from most of us, Democrats and Republicans, and from the majority of the American people.

Mr. Magaw?

Mr. MAGAW. Well, as I said before, I welcome the oversight. I think it's needed. I'm a law enforcement person for 34 years. I look at things like a law enforcement officer does. I needed to be looked at by a former U.S. attorney, as many of you are. And also it's such a controversial issue that we deal with, you have to understand what the problems are and what we're trying to do in order to give us the support we need in terms of budget and other things, when there's a huge lobby out there that will be trying to get you to do other things. So I welcome it. And it will make us a much better organization. This—this hearing here will make all of law enforcement, local, State, county and Federal, better.

Mr. MCCOLLUM. Thank you, Mr. Schumer.

Your time is expired.

Mr. Shadegg, you're recognized for 5 minutes.

Mr. NOBLE. Mr. Chairman, may I at some point—

Mr. MCCOLLUM. Who's asking here?

Oh, Mr. Noble, I'm sorry.

I get so busy with my members, I wasn't looking at the witness.

Mr. NOBLE. At some point, I would just like to answer the question of Mr.—either Souder or Suder—

Mr. MCCOLLUM. You may do that now before Mr. Shadegg goes ahead, please.

Mr. NOBLE. Mr.—is it Souder or Suder?

Mr. MCCOLLUM. I believe it's Souder.

Mr. NOBLE. Souder, correctly pointed out that the document marked 19385, included that ATF did not possess the expertise or the negotiators necessary for siege and that was a factor that ought to have been included in a list of reasons that were articulated on pages 134 through 142, explaining why ATF or how ATF did not fully exhaust other options. So I just want to point for the record, that's a fair criticism and Mr. Souder's correct.

Mr. MCCOLLUM. In other words, what you're saying is that they didn't have either the negotiators or the expertise to do a siege, and that was not—

Mr. NOBLE. That they didn't have the—

Mr. MCCOLLUM. That's what that comment read.

Mr. NOBLE. That they did not possess the expertise or the negotiators necessary for a siege, that they, it goes on further, anticipated it would last several months—yes, sir.

Mr. MCCOLLUM. Right, thank you.

Mr. SCHUMER. Mr. Chairman, I have a unanimous-consent request.

Mr. MCCOLLUM. You may state it.

Mr. SCHUMER. The Treasury has put together a bunch of documents, they all come from the requested documents, that show that there was—that at least they believe there was a significant drug purpose in the compound when they made the request to the military, and I would simply ask unanimous consent that—

Mr. SHADEGG. Reserving the right to object.

Mr. SCHUMER [continuing]. This be put in the record.

Mr. MCCOLLUM. There's a reservation of the right to object over here.



Mr. SHADEGG. It mystifies me that throughout these hearings, whenever we request documents, we don't get them for days or weeks, whenever we request weapons, we don't get them for days and weeks, and then suddenly minority can produce them. I just find it absolutely baffling that that happens over and over and over again. And now it's happening one more time.

I'd like it make a conditional request. We started this hearing with the testimony of the author of a book who said that there are hundreds of reports prepared by the Texas Rangers that he can't get access to, that he has to file suit to. It seems to me that Mr. Schumer has some miracle power to get anything he wants.

Mr. SCHUMER. Hey, if you're nice, I may tell you what it is.

Mr. SHADEGG. I'd love to have these documents come in. But could we condition it upon him also getting the Texas Rangers reports in so the American people can see those?

Mr. SCHUMER. Listen, if you want to make an arrangement, then together we'll make a whole bunch of joint requests that will then be automatically honored by the chairman——

Mr. MCCOLLUM. Will the gentleman yield on your reservation? Will the gentleman yield to the chairman?

Mr. NOBLE. The documents have already been provided to the committees. So these are documents that you already possess.

Mr. SCHUMER. And if the gentleman would yield for just a minute, these are all documents that came in the large number that were sent over, and I had asked the folks to put them together. They did, but only now. I would have rather, believe me, if I had my druthers, I would have liked these documents to be available when we had the military here.

Mr. ZELIFF. Can we just use your index? Because we got 48,000 pieces of paper with no index, which I think is absolutely irresponsible in the way that this thing has been set up and it's wrong, and you know it, Chuck.

Mr. MCCOLLUM. Hold on. On the reservation that Mr. Shadegg has, will he yield to me, please, in regular record here?

Mr. SHADEGG. I will yield.

Mr. MCCOLLUM. I would like to make the observation, not to just simply concur in what Mr. Zeliff said, because the failure to get the cooperation of the Treasury Department to provide us with an index has been a very difficult problem. That's why we don't know what all these documents are. It takes hours to try to figure out what one of these numbers is. You're reading it over and you wonder what the heck it is.

And I'm just wondering if on your reservation, Mr. Noble might assure us that even though it might not be as timely for us as we would have prepared it to be, that somebody be assigned to provide us at as early a date as possible at Treasury, an index to the documents that have been sent down here. Because it is very difficult.

We pick them up and we're out here working with you, and while we don't expect in the future to have more opportunities to ask questions necessarily, we certainly don't want to protract the hearings, we are going to be writing a report. And it would certainly be nice to be able to have our staff be given an index so that we could intelligently look at what you have sent over here.

Mr. NOBLE. I wish you'd only asked me for that. If you would only asked me, I would have provided it, gladly.

Mr. ZELIFF. Can we ask you now?

Mr. NOBLE. I will provide it.

Mr. SCHUMER. And I would just renew my unanimous-consent request, making it—I just asked for these. It took a few days to get them and they weren't delivered—someone mentioned, I don't remember if it's Mr. Zeliff, Mr. McCollum or Mr. Shadegg, that the request wasn't timely. This one isn't timely either, for my best purposes. I wish I had had it a few days ago.

Mr. SHADEGG. Continuing my right to object, will Mr. Schumer join me in a letter to the Texas Rangers stating that it is important to the people of America that we be able to see those reports, as this investigation was conducted by Texas Rangers?

Mr. SCHUMER. Sure, I'd like to. Would you join me in a letter to the Texas Rangers asking that the guns, all the guns that were found in the compound be made available? That's been blocked by the majority.

Will you?

Mr. SHADEGG. My understanding is that you've already made it clear you can produce those things.

Mr. SCHUMER. It's been blocked by the majority, sir.

Mr. MCCOLLUM. If you will yield on your reservation over here.

Mr. SHADEGG. I'll yield.

Mr. MCCOLLUM. These documents are here. I don't know about the Texas Rangers documents. But these documents that we're talking about here, are here. We did not wish to see a road show up here of guns at this late hour when we didn't—

Mr. SCHUMER. I've been informed you have the Texas Ranger documents.

Mr. MCCOLLUM. Hold on. I still have Mr. Shadegg on a reservation. If somebody wants time, they got to ask him to yield or they have to reserve it.

Mr. SCHUMER. Will the gentleman yield?

Mr. SHADEGG. I withdraw my objection.

Mr. MCCOLLUM. The objection is withdrawn.

Unanimous consent is requested.

Without objection, so ordered.

[The information follows:]





REPLY TO  
ATTENTION OF

DEPARTMENT OF DEFENSE  
JOINT TASK FORCE SIX  
FORT BLISS, TEXAS 79016-0001



FCJT-J3 (340)

18 August 1993

MEMORANDUM THRU Commanding General, Joint Task Force Six

FOR Commander, Forces Command, ATTN: FCJ3-CD, Fort McPherson, GA  
30330-6000

SUBJECT: Summary of Investigative Inquiries to Joint Task Force Six (JTF-6) Support to Bureau of Alcohol, Tobacco and Firearms, Mission 002E-93

1. Reference Fonecon with [REDACTED], Headquarters FORSCOM, FCJ3-CD, subj: SAB. (10)

2. As requested, provided below is a summary of inquiries directed to JTF-6 and responses provided to the Treasury Department's investigation of the Bureau of Alcohol, Tobacco and Firearms (BATF) Waco operation. The inquiries were telephonic and directed to [REDACTED] and [REDACTED] (7)

3. The interview was conducted by Secret Service Agent [REDACTED] who was part of a 21 agent team appointed by the Treasury Department to investigate the ATF Waco Operation. The intent of the investigative team was to determine methods to improve procedures involving assaults by law enforcement agencies. All information provided was taken directly from the chronology table of the 26 February 1993, Memorandum for Director of Operations, Forces Command (Encl 1), describing the history of JTF-6 support. [REDACTED] was interested in the support request process as it related to this mission. [REDACTED] described the standardized procedures which require law enforcement agencies to submit requests for military support through Operation Alliance to JTF-6. Described in detail were the following organizations and the types of support they normally provided to law enforcement agencies (LEA): (24)

a. JTF-6 provides Title 10 forces to the Southwest Border (SWB) drug-related law enforcement agencies. Support falls into one of three categories: Engineer (horizontal and vertical construction), Operational (direct participation in a LEA drug (2)

LEA SENSITIVE

D-549

NOV 18 09 14 JTF6 J3/PLANS

## LEA SENSITIVE

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SUBJECT: Summary of Investigative Inquiries to Joint Task Force Six (JTF-6) Support to Bureau of Alcohol, Tobacco and Firearms, Mission 002E-93

operation within specified legal and policy constraints), and General (training or assistance to LEA in a nontactical role such as a Mobile Training Team). Mission 002E-93 fell into the general support category, specifically a Mobile Training Team.

b. The four-state SWB National Guards provide Title 32 support designed to increase efficiency and effectiveness of LEAs. [REDACTED] indicated that representatives of the Texas NG were present at the planning meetings and provided personnel, aircraft, and other military equipment for the Waco operation.

⑦ c. The Regional Logistics Support Office provides nonoperational logistic and training support.

4. The subject of a drug connection to the Waco operation also received some attention. [REDACTED] affirmed that the determination of a drug connection was the primary responsibility of the law enforcement community as represented by Operation Alliance. Even though JTF-6 routinely provides Mobile Training Teams to Federal, state and local LEAs involved in drug-related operations, BG Pickler, due to the obvious sensitivities of this request, wanted to ensure that indeed there was a specific drug relationship. As a result, during a 4 February meeting in Houston, the BATF showed [REDACTED] several documents indicating that three individuals believed to be inside the compound had records of drug convictions or arrests. He was also told that the BATF had recent interviews from individuals inside the compound (who had subsequently left the cult) that Methamphetamine had been produced as recently as 1989. Furthermore, the BATF plan indicated that a special LEA Team was being incorporated into the operation to search for dangerous chemicals used in the conduct of drug production. JTF-6 felt that between the Operation Alliance request and the 4 February meeting in Houston, a solid drug connection was established.

LEA SENSITIVE

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LEA SENSITIVE

FCJT-J3 (340)

SUBJECT: Summary of Investigative Inquiries to Joint Task Force Six (JTF-6) Support to Bureau of Alcohol, Tobacco and Firearms, Mission 002E-93

5. [redacted] provided an account of the specific support provided and a chronology of the Special Forces team's actions as outlined in enclosure 1. He emphasized the support provided by JTF-6 was a Mobile Training Team (MTT) and not operational support. The support took place at Fort Hood, Texas and consisted of weapons range support, coordinating billeting and mess support, MOUT site preparation, company level communications training, and emergency medical evacuation training. He reaffirmed that JTF-6 Title 10 personnel were not present in Waco and that the Special Forces Team redeployed to Fort Bliss prior to the BATF assault.

6. There were also some questions as to why the CONTOUR medical trauma teams from Bethesda were not used. [redacted] indicated that JTF-6 had discussed this asset with BATF during the initial MTT planning meetings. The BATF planners were satisfied with their medical arrangements; and as a result, the subject was dropped.

7. Inquiries concerning the use of armored vehicles were also made in the initial planning meetings, and the following was offered:

a. The initial request for Bradley Fighting Vehicles was made for ATF personnel protection only, not for assault purposes.

b. Because a Bradley could be penetrated by the .50 caliber machine guns which were suspected to be present on the compound, we mentioned during the planning phases that only the Abrams tank would afford total safety.

c. Because of the lengthy and involved training required for a new individual to drive the Bradley, we recommended that the Texas National Guard be contacted for this type of support. [redacted] again reiterated that JTF-6 did not provide any support to BATF at the Waco compound.

3

LEA SENSITIVE

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LEA SENSITIVE

FCJIT-J3 (340)

SUBJECT: Summary of Investigative Inquiries to Joint Task Force Six (JTF-6) Support to Bureau of Alcohol, Tobacco and Firearms, Mission 002E-93

8. [REDACTED] concluded his portion of the discussion asserting once again that the support provided consisted only of assisting the BATF teams in their preparation for the operation. The Special Forces team did not provide specific planning assistance concerning the actual assault. The BATF developed their operational plan, and their assault teams were already trained entities before they arrived at the Fort Hood MTT training site.

9. Following [REDACTED]'s discussion [REDACTED] talked very briefly with [REDACTED] reference his involvement in processing the BATF mission support request (SR) within Operation Alliance. He reviewed how the initial request proceeded through Operation Alliance. He described how it was staffed internally and discussed with planners at JTF-6 and Operation Alliance. This discussion centered around the feasibility of the support by Active and National Guard forces. The final discussion focused on the generic internal Operation Alliance SR process prior to a support request being forwarded to JTF-6.

Encl

[REDACTED]  
[REDACTED]  
COL, USA  
[REDACTED]

(12)

LEA SENSITIVE

D-552

## WACO ADMINISTRATIVE REVIEW

## MEMORANDUM OF INTERVIEW

PAGE: 1

Date: June 13, 1995

FILE TITLE: [REDACTED] WITNESS: [REDACTED] TITLE: SENIOR AIRMAN DATE OF INTERVIEW: JUNE 16, 1993 INTERVIEWING AGENTS: ROBERT K. TEVENS	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: Senior Airman [REDACTED]

Date of interview or action: June 16, 1993

Report prepared by: SSA Robert K. Tevens &amp; SSA Colleen Callahan

Contact Address: Adjutant General's Department  
 Senior Airman  
 Texas National Guard Counterdrug Support Group  
 [REDACTED]  
 Austin, Texas 78763

Contact Phone Number: [REDACTED]

## SYNOPSIS:

On Monday, June 14, 1993, Special Agent Colleen Callahan and I interviewed Senior Airman (SRA) [REDACTED] Counterdrug Support Group, Adjutant General's Department at the Texas National Guard Unit, [REDACTED] Austin, Texas. SRA [REDACTED] provided the following information about himself and about his involvement in the execution of Federal search and arrest warrants near Waco, Texas on February 28, 1993.

The intention of this report is to provide a detailed chain of events and specific knowledge of individuals who were involved in the Texas National Guard support of the Bureau of Alcohol, Tobacco and Firearms (ATF) investigation of Vernon Wayne Howell. To that end, this report represents a compilation of interviews conducted by the WRT with LTC Pettit as well as Texas State Interagency Coordinator William R. Enney, Assistant Texas State Interagency Coordinator Susan M. Justice, and Texas National Guard Senior Airman [REDACTED].

Additionally, funding of military support of U.S. law enforcement is either reimbursable or non-reimbursable. Generally, state, local and Federal law enforcement agencies are responsible for the reimbursement of military support in non-counterdrug operations. Counterdrug operations are Federally funded under the DoD Authorization Act. Mr. Enney maintained that because mere suspicion of a methamphetamine lab existed in the Howell investigation, the resulting National Guard support was non-reimbursable.



## MEMORANDUM OF INTERVIEW

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FILE TITLE: [REDACTED]  
 INTERVIEWING AGENT: ROBERT K. TEVENS

DATE: June 13, 1995  
 WACO ADMINISTRATIVE REVIEW

## PERSONAL BACKGROUND AND TRAINING:

Since December 1986, SRA [REDACTED] has held an SCI security clearance, which he obtained while he was assigned to Calclan Air Force Base.

In November 1987, SRA [REDACTED] graduated from Military Intelligence School, Goodfellow Air Force Base, San Angelo, California.

In 1989, he was assigned to the "Paladin" exercise at Davis, Air Force Base, Tucson, Arizona.

In 1990, he was assigned to the "Roving Sands" exercise at Holliman Air Force Base in New Mexico.

From December 5, 1990 up to and including the present, SRA [REDACTED] has been assigned to the Counterdrug Support Group, Adjutant General's Department at the Texas National Guard Unit, [REDACTED] Austin, Texas.

## CHRONOLOGY OF EVENTS:

The following Chronology of Events is attributable to SRA [REDACTED], as well as Texas State Interagency Coordinator William R. Enney, Texas State Assistant Interagency Coordinator Susan M. Justice, and Texas National Guard Lieutenant Colonel William G. Pettit, Jr.

On December 11, 1992, Special Agent Jose G. Viegra, RAC/Austin, Texas visits the office of Lieutenant Susan M. Justice, Assistant Interagency Coordinator, Texas National Guard, Counterdrug Support Program, [REDACTED] Austin, Texas. Texas State Interagency Coordinator William R. Enney is present for part of the meeting between the Lieutenant and Agent Viegra. Mr. Enney is designated by Texas Governor Ann W. Richards as the Texas State representative for DoD coordination of the Texas National Guard Counterdrug Support Program.

During the above meeting, Agent Viegra asks general questions of Lieutenant Justice about the aerial reconnaissance photography capabilities of the Texas National Guard and provides her with a brief synopsis of the Howell investigation. He also shows the lieutenant an old color photograph of the Branch Davidian compound.

On December 11, 1992, Lieutenant Justice informs Agent Viegra of the various available surveillance assets and asks him if the Howell investigation is drug related. Agent Viegra responds that he can not provide Lieutenant Justice with information about any narcotics related violations. She then tells Agent Viegra that non-reimbursable military support of the investigation, without a drug nexus, is not possible.

## MEMORANDUM OF INTERVIEW

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FILE TITLE: [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: ROBERT K. TEVENS	WACO ADMINISTRATIVE REVIEW

Upon overhearing the negative response of Lieutenant Justice to Agent Viegra's request for military support, Mr. Enney interrupts and asks Agent Viegra to once again present a brief synopsis of the investigation. Agent Viegra complies and provides Mr. Enney with a second brief synopsis of the case. Mr. Enney also stresses the need for a drug nexus and tells Viegra to return to his office for a determination as to whether or not such a nexus exists. Mr. Enney adds that, if a drug case does exist within the Howell investigation, ATF should then prepare an official written request for support to be forwarded to him at the Counterdrug Support Office. Essentially, Mr. Enney has just provided Agent Viegra with a verbal interpretation of NGR 500-2. Agent Viegra, Lieutenant Justice, and Mr. Enney have all informed the WRT that no case-specific information about a drug nexus within the Howell investigation was provided by Agent Viegra during the their meeting on December 11, 1992.

Also in early December 1992, ATF Group Supervisor Curtis Williams, SAC/Houston, Texas contacts the U.S. Customs Service (USCS), Houston Aviation Branch, Houston, Texas and requests the use of a USCS UH-60 Blackhawk helicopter for insertion of a Special Response Team (SRT) and a JSCS Citation fixed wing aircraft for surveillance of the Branch Davidian compound.

On December 14, 1992, Mr. Enney and Lieutenant Justice receive a facsimile (fax) copy of a SAC/Houston letter, dated December 14, 1992, which requests military support for aerial reconnaissance photography of the Branch Davidian compound, McLennan County, Texas. The signature of RAC Earl K. Dunagan, RAC/Austin is on the SAC/Houston request. The request cites violations of the Gun Control Act of 1968 and the Organized Crime Control Act of 1970, Title XI, specifically the alleged manufacture of machine guns and explosive devices.

Additionally, the above memorandum also includes a request for the transport of ATF agents aboard the aircraft during reconnaissance missions, as well as the interpretation and evaluation of the photographs. The request, which does not include any information about suspected drug violations, identifies Agents Viegra and Jeffrey Brzozowski as contacts.

On December 14, 1992, at 4:20PM, Lieutenant Justice writes the following comments on the above ATF request for military support, "What about drugs...OK...C-26 Photo...1620 14Dec92... SRA [REDACTED] coordinating dates". The Lieutenant has already briefed Senior Airman (SRA) [REDACTED] Texas National Guard, about the case. Additionally, when the Lieutenant shows the request to LTC Pettit, he approves the request by writing the following comments on the request, "OK...BW... 14Dec92". The letters, "BW", stand for Buckwheat, LTC Pettit's nickname.

It is noted that, during his interview with the WRT, SRA [REDACTED] said that he read the SAC/Houston request, dated December 14, 1992, and was not

## MEMORANDUM OF INTERVIEW

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FILE TITLE: [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: ROBERT K. TEVENS	WACO ADMINISTRATIVE REVIEW

comfortable with it because there was no mention of a drug case. He said that Lieutenant Justice assured him that there was in fact a drug nexus based upon conversations that she and Mr. Enney had with ATF officials.

On December 14, 1992, Lieutenant Justice receives a telephone call from Agent Viegra for verification of her receipt of the request and to inform her of an additional request. Lieutenant Justice acknowledges receipt of the first request and tells Agent Viegra that any subsequent requests also need to be in writing. Lieutenant Justice does not discuss the drug case with Agent Viegra during their telephone call.

On December 18, 1992, Mr. Enney and Lieutenant Justice receive a second fax copy of a SAC/Houston letter, dated December 18, 1992, which requests military support for aerial reconnaissance photography of the Mag Bag, Limestone County, Texas. The signature of RAC Dunagan is again on the request. The request cites suspected violations of the Federal Firearms Laws, specifically the alleged illegal possession of firearms and "possibly narcotics". The request asks for an interpretation and evaluation of the photographs. Agent Brzozowski is identified as the contact for the request. This is the first ATF written request for military support that mentions a drug nexus, which is based upon the suspicion of a methamphetamine laboratory and the prior drug records of Branch Davidians.

On December 21, 1992, Mr. Enney writes the following comments on the December 18, 1992 request, "OK...Enney...21Dec92".

On Wednesday, January 6, 1993, the first National Guard sortie is flown over the Branch Davidian compound and the Mag Bag sites by the Texas National Guard Counterdrug UC-26, which is a fixed wing dual engine prop aircraft. Numerous aerial reconnaissance photographs are taken by the crew. Additionally, the mission includes the use of the Thermal Imaging System (TIS) previously known as Forward Looking Infrared (FLIR). The improved TIS provides a more comprehensive view of the compound due to its ability to film thermal objects at various angle.

During the above mission, the TIS locates a "hot spot" inside the Branch Davidian compound and also identifies three sentries outside and behind the compound. Although the ATF has officially requested an interpretation and evaluation of the photographs, LTC Pettit and Lieutenant Justice maintain that only information about grid coordinates are officially provided to ATF. No official opinion is provided to ATF about the "hot spot".

On Monday, January 11, 1993, SRA [REDACTED] receives the developed photographs from the January sixth National Guard sortie and transports them to the RAC/Austin office. The RAC/Austin is pleased with the photographs and asks SRA [REDACTED] to fly an oblique aerial mission, which would provide low angle shots of the compound.

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FILE TITLE: [REDACTED]  
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On Thursday, January 14, 1993, the second National Guard sortie is flown over the Branch Davidian compound and the Mag Bag sites by the Alabama National Guard RF4-C A, which is a jet aircraft. Numerous oblique aerial photographs are obtained.

On Friday, January 15, 1993, SRA [REDACTED] speaks with Alabama National Guardsman Doug Truell, Intelligence, who informs him that the photo enlargements of the January fourteenth National Guard sortie would arrive at SRA [REDACTED]'s office no later than January 21, 1993.

On Wednesday, February 3, 1993, RAC Earl K. Dunagan, RAC/Austin, Texas signs a request, which is addressed to LTC William G. Pettit, Texas National Guard and Texas State Interagency Coordinator William R. Enney. The request is for an additional sortie over the Branch Davidian compound and the Mag Bag. The letter includes the statement, "The interpretation and evaluation of the photographs by SRA [REDACTED] have greatly assisted in our on-going investigation...".

UTC Pettit has informed the WRT that any interpretations of the aerial reconnaissance photographs provided by SRA [REDACTED] are deemed "unofficial". Lt. Susan Justice acknowledges receipt of the letter by making an ink notation that reads, "O.K. SRA [REDACTED] coordinating w/LEA [signed] Justice 8 Feb 93".

On Wednesday, February 3, 1993, the third National Guard sortie is flown over the Branch Davidian compound and the Mag Bag sites by the Texas National Guard Counterdrug UC-26 aircraft. Numerous aerial reconnaissance photographs, which include infra-red video, are taken by the crew.

On Thursday, February 4, 1993, another meeting is held at the SAC/Houston office regarding military support in the Howell investigation. In attendance at the meeting are Mr. William R. Enney, Texas State Interagency Coordinator; Major Lenn M. Lannahan, JTF-6 Liaison; Special Agent Eddie Z. Pali, ATF Coordinator to Operation Alliance; Special Agent Phillip A. Lewis, Houston Division Operations Officer; and Assistant Special Agent in Charge Charles O. Sarabyn.

Discussions about the suspected existence of a methamphetamine lab are addressed at the meeting. ASAC Sarabyn reportedly offers ATF documents, which include a list of methamphetamine precursor chemicals, in support the drug nexus. ATF documentation suggest that, "...a dangerous extremist organization is believed to be producing methamphetamine." Additionally, military assistance is being requested, "...in direct support of interdiction activities along the Southwest Border". As a result of the meeting, military support of the Howell investigation continues.

On Saturday, February 6, 1993, the fourth National Guard sortie is flown over the Branch Davidian compound and the Mag Bag sites by the Texas

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FILE TITLE: [REDACTED] RKT  
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National Guard Counterdrug UC-26 aircraft. Numerous aerial reconnaissance photographs, which included infra-red video, are taken by the crew.

On Thursday, February 18, 1993, the fifth National Guard sortie is flown over the Branch Davidian compound and the Mag Bag sites by the Texas National Guard Counterdrug UC-26 aircraft. Numerous aerial reconnaissance photographs are taken by the crew.

On Wednesday, February 24, 1993, Special Agent Phil Lewis, Houston Division Operations Officer, signs a letter addressed to LTC William G. Pettit, Texas National Guard Task Force Commander, and Mr. William R. Enney, Texas State Interagency Coordinator, which requests the following military support.

QUANTITY	SUPPORT
1	44 passenger bus with driver
1	two and one-half ton truck with driver with water buffalo
4	GP medium sized tents
1	GP small sized tent
14	tables
60	chairs
1	paper shredder
1	video taper personnel
2	pathfinder personnel
1	photo interpreter
2	OH-58 Bell Helicopters Rangers with crews
1	UH-60 Blackhawk helicopters with crew

The aircraft is identified in the request of Agent Phil Lewis as necessary for the use of the Thermal Imaging Systems "...and as an airborne command and control platform." The request mentions nothing about the aircraft being used as a diversionary tactic for the impending raid.

On Wednesday, February 24, 1993, Lt. Justice arrives at Fort Hood, Killeen, Texas via official Government vehicle and meets with Special Agent Phil

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FILE TITLE: [REDACTED] SRT	DATE: June 13, 1995
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Lewis. The lieutenant has with her a Texas National Guardsman who is responsible for the video taping of the Fort Hood training exercises of ATF agents. All video tapes are immediately turned over to the ATF upon completion of recording. She remains overnight at the Best Western Hotel.

On Thursday, February 25, 1993, Lt. Justice returns to her office at Camp Mabry in Austin for the purpose of coordinating the final C-26 aerial reconnaissance mission over the Branch Davidian compound.

On Thursday, February 25, 1993, the sixth and final National Guard aerial reconnaissance sortie is flown over the Branch Davidian compound and the Mag Bag sites by the Texas National Guard Counterdrug UC-26 aircraft. Numerous aerial reconnaissance photographs are taken by the crew. Black and white film is utilized to expedite film processing.

On Friday, February 26, 1993, Lt. Justice returns to Fort Hood via official Government vehicle with the Texas National Guard Pathfinders. She meets with ASAC Chuck Sarabyn and makes introductions of the Pathfinders to him. ASAC Sarabyn comments to her that he is pleased with the military support of ATF. She does not recall attending a meeting that day prior to going to her room at the Best Western Hotel for the evening. Due to National Guard policy, she is careful not to violate operational security.

On Friday, February 26, 1993, Colonel Carl D. Shores, Chief, Counterdrug Support Division, National Guard Bureau, Washington, D.C. approves a request of The Adjutant General, Austin, Texas for permission to perform an engineering counterdrug support mission in the Howell investigation.

On Saturday, February 27, 1993, SRA [REDACTED] arrives at the Fort Hood MOUT site via an official Government vehicle and observes training of the ATF Special Response Teams (SRT). Sometime that day, LTC Pettit shows him a copy of the Waco Tribune article of David Koresh, aka Vernon Wayne Howell and the Branch Davidians with its accompanying photograph of the Branch Davidian compound. LTC Pettit questions SRA [REDACTED] as to where the Tribune obtained the photograph of the compound. Upon looking at the photograph, SRA [REDACTED] responds that the photograph has been taken a considerable time before the Texas National Guard conducted its aerial reconnaissance missions of the compound.

At approximately 7:00PM, SRA [REDACTED] attends a briefing at the Best Western Hotel in Waco. ATF Agents, who preside over the briefing, utilize a diagram and aerial photographs of the Branch Davidian compound. SRA [REDACTED] is to board the Texas National Guard UH-60 Blackhawk helicopter and assist ATF personnel with the resulting transport flights of the Blackhawk after the compound is secured.

On Sunday, February 28, 1993, at approximately 7:00 AM, SRA [REDACTED] arrives at the TSTI Command Post. SRA [REDACTED] meets with Drug Enforcement

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FILE TITLE: [REDACTED].RKT	DATE: June 13, 1995
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Administration (DEA) Special Agents Delfino Sanchez and Lex Henderson, Austin, Texas at the Command Post. Agent Sanchez tells him that, upon the execution of the search warrant, he and Agent Henderson are to perform the clean up of the suspected methamphetamine laboratory. He also meets with an Immigration and Naturalization (INS) agent, who reportedly films the execution of the warrant.

Although SRA [REDACTED] cannot recall a specific time, SAC Ted Royster, Special Agent Davy Aguilera and two other unidentified ATF agents board the UH-60 Blackhawk and lift off from the TSTI Command Post in route to the hover area, aka race track. While airborne, SRA [REDACTED] hears an ATF radio transmission from the ground, possibly Agent Ivan Kallister, who says something to the effect that, "...we need to go in..." or "...we need to go in now, they moved it up...". With that statement, the helicopters move toward the compound.

A few minutes later, SRA [REDACTED]'s aircraft receives gunfire from a ridge behind the Branch Davidian compound, not the compound itself. Sometime later that day when SRA [REDACTED] is able to return to the Command Post and assisted ATF in its additional requests for military support.

## SUMMARY:

SRA [REDACTED] was under the direct and explicit supervision of Texas State Interagency Coordinator William R. Enney, Lieutenant Susan M. Justice, and LTC William G. Pettit, Jr. SRA [REDACTED] advised that he offered his personal opinions to ATF officials regarding the National Guard's aerial reconnaissance photographs of the Branch Davidian compound. LTC Pettit, Mr. Enney, and Lieutenant Justice have all maintained that, although the National Guard may comment about graph location on a map, it does not offer to law enforcement entities an official opinion on the results of Thermal Imaging System (TIS) or Infra Red photographs. This is traditionally not done, due to the inherent nature of numerous possible causes for "hot spots", such as a furnace or an oven. SRA [REDACTED] said that he offered his opinion about the existence of pipes sticking out of the compound pool area as a possible vent for a methamphetamine lab. He also told ATF personnel that the hot spot could possibly be the result of a methamphetamine lab.

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FILE TITLE: [REDACTED] WRT	DATE: June 13, 1995
INTERVIEWING AGENT: ROBERT E. TEVENS	WACO ADMINISTRATIVE REVIEW

**Investigative notes:**

Reference is made to my investigative notes, dated Wednesday, June 16, 1993. This report has relevance to Central Issue I.

**Related investigatory material:**

Reference is made to the report of Senior National Guard Liaison Officer to the Drug Enforcement Administration, Colonel Philip W. Spence, dated Wednesday, April 27, 1993, and the After Action Report of LTC Pettit, dated Thursday, April 29, 1993. Further reference is made to the WRT Reports of Interviews of Mr. William R. Enney, Lieutenant Susan M. Justice, LTC William G. Pettit, Jr., and to the WRT Time Line entitled, "Military Support".

A C C I O O



## WACO ADMINISTRATIVE REVIEW

PAGE: 1

## MEMORANDUM OF INTERVIEW

Date: June 13, 1995

FILE TITLE: [REDACTED] WITNESS: [REDACTED] TITLE: DEA DATE OF INTERVIEW JUNE 15, 1993 INTERVIEWING AGENTS SUSAN G. ROWLEY	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: [REDACTED]

Date of interview or action: June 15, 1993Report prepared by: Susan G. RowleyContact Address: Drug Enforcement Administration  
Austin, TexasContact Phone Number: [REDACTED] Office  
[REDACTED] Beeper

[REDACTED] is a Group Supervisor with DEA/Austin. [REDACTED] has two task groups under his supervision. One of these task groups is in Austin and the other group is in Waco. He divides his time between Austin and Waco and was in Waco when I spoke with him.

[REDACTED] stated that he and the following DEA agents were present at the Command Post area at TSTC at approximately 9:30AM, Sunday, 02/28/93:

[REDACTED] (Waco Office)  
 [REDACTED] (Waco Office)  
 [REDACTED] (Austin Office)

[REDACTED] had also made arrangements for some DPS personnel including a chemist to be present. [REDACTED] will supply the names of the DPS personnel present at a later date over the phone. He could not remember their names off the top of his head.

When [REDACTED] was first informed by ATF of the information about a meth lab possibly being present at the compound, he stated that he was able to partially confirm this information. DEA had a confidential informant who had actually visited the compound and had seen the lab. [REDACTED] also said that in addition to providing this information to ATF, he also gave it to a Lieutenant in the Texas Rangers. [REDACTED] will supply the name of the Lt. in the Rangers at a later time. [REDACTED] stated that he would check that information to ascertain when the informant was inside the compound and volunteered to allow us to interview the informant.

I asked [REDACTED] whether he had any discussions with ATF about the volatility of the chemicals which would be in a meth lab and any precautions which should be used. [REDACTED] said that DEA and ATF constantly work

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## MEMORANDUM OF INTERVIEW

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FILE TITLE: ██████████	DATE: June 13, 1995
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together in the Austin area and have done joint raids on many labs. ██████████ feels that everyone in the Austin ATF office is aware of the precautions used in conducting a raid against an area which may house a meth lab and to further discuss those precautions would be a waste of time.

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## WACO ADMINISTRATIVE REVIEW

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## MEMORANDUM OF INTERVIEW

Date: June 13, 1995

FILE TITLE: [REDACTED] WITNESS: [REDACTED] TITLE: OPERATION ALLIANCE/DEA DATE OF INTERVIEW: JUNE 24, 1993 INTERVIEWING AGENTS: ROBERT TEVENS	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: Senior Special Agent [REDACTED]  
Operation Alliance Coordinator for DEA

Date of interview or action: June 24, 1993

Report prepared by: SSA Robert E. Tevens

Contact Address: Drug Enforcement Administration  
Operation Alliance Coordinator  
Biggs Army Air Field  
Building 11606  
El Paso, Texas 79908

Contact Phone Number: [REDACTED]

## SYNOPSIS:

On Thursday, June 24, 1993, at 12:00Noon, I interviewed Senior Special Agent [REDACTED], Coordinator for the Drug Enforcement Administration (DEA), Operation Alliance, Biggs Army Air Field, Building, El Paso, Texas 79908, telephone number (915) 540-6130, at his office. Agent [REDACTED] provided the following information about himself and about his involvement in the execution of federal search and arrest warrants near Waco, Texas on Sunday, February 28, 1993.

With respect to the military support of the ATF in its investigation of Vernon Wayne Howell, this report does not attempt to substantiate, with proof beyond a reasonable doubt, the existence of a methamphetamine laboratory on the premises of the Branch Davidian compound. It does however, provide insight into the portrayal of the alleged existence of such a laboratory by the Bureau of Alcohol Tobacco and Firearms (ATF) to DEA and the Operation Alliance Joint Command Group.

## OPERATION ALLIANCE:

To understand the approval process of the request for military support in the ATF Vernon Howell investigation, reference is made to the copy of the "Operation Alliance Briefing Book II", dated April 1993, as well as the "Joint Task Force Six - Operational Support Planning Guide", dated January 1993, supplied by Special Agent Eddie Z. Pali, ATF Coordinator for

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## MEMORANDUM OF INTERVIEW

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FILE TITLE: [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: [REDACTED]	WACO ADMINISTRATIVE REVIEW

Operation Alliance. A brief overview of Operation Alliance is also included in the Report of Interview of Agent Pali.

## REQUEST FOR MILITARY SUPPORT OF THE VERNON WAYNE HOWELL INVESTIGATION:

Agent [REDACTED] maintained that, he never questioned the validity of the drug nexus in the Howell investigation because he understood the primary thrust was the suspected Gun Control Act violations.

## CHRONOLOGY OF EVENTS:

On Tuesday, February 2, 1993, Agent [REDACTED] attended the briefing during which ATF Special Agent Phillip Lewis provided details about the Howell investigation to the Operation Alliance Joint Command Group in El Paso, Texas. Agent Lewis provided an update of the suspected methamphetamine laboratory at the Branch Davidian compound, which had received deliveries of chemical precursors for the manufacture of methamphetamine. Agent [REDACTED] recalled that Agent Lewis had displayed a list of names of the precursor chemicals to the group. Similar to the opinion of Senior Special Agent Eddie E. Pali, Operation Alliance Coordinator for ATF, during his interview with the Waco Review Team (WRT), Agent [REDACTED] opined that chemicals used in the manufacture of methamphetamine could also be used in the manufacture of explosives. Additionally, Agent [REDACTED] understood that the alleged laboratory was for the production of methamphetamine for the exclusive consumption of the Branch Davidians on their compound and not for sale off the premises.

Upon the approval of military support of the Howell investigation by the Joint Command Group, Agent [REDACTED] offered the assistance of a DEA Clandestine Certified Laboratory Team. Although Agent Pali initially declined the request, Agent [REDACTED] provided Agent Lewis with the telephone number of Resident Agent in Charge (RAC) Arthur C. Wilson, DEA/Austin, Texas. This was the extent of Agent [REDACTED] participation in the Howell investigation prior to the raid on February 28, 1993.

On Monday, March 1, 1993, Agent [REDACTED] learned of the failed raid and immediately telephoned RAC Wilson to ascertain the involvement, if any, of DEA. RAC Wilson informed Agent [REDACTED] that DEA Group Supervisor Lex Watson and DEA Special Agent Delfino Sanchez of the DEA Austin office, [REDACTED] site with a DEA clandestine laboratory truck at the Texas State Penitentiary Institute ATF Command Post on Sunday, February 28, 1993. He [REDACTED] the [REDACTED] additional Clandestine Laboratory Certified DEA agents, Jay [REDACTED] Watson, were on stand-by in Waco.

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FILE TITLE [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: ROBERT K. TEVENS	WACO ADMINISTRATIVE REVIEW

## SUMMARY:

Agent [REDACTED] does not believe that ATF embellished or concocted information about the suspected methamphetamine laboratory at the Branch Davidian compound for the purpose of obtaining non-reimbursable military support in the Vernon Wayne Howell investigation. Although he felt that the evidence of such a laboratory was weak, Agent [REDACTED] did not question the validity of the claim due to the fact that the primary concern of ATF in the case were the suspected violations of the Gun Control Act.

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FILE TITLE: IROCHON.RKT

DATE: June 13, 1995

INTERVIEWING AGENT: ROBERT K. TEVENS

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## Investigative notes:

Reference is made to my investigative notes, dated June 24, 1993, and to the ATF log entries of Agent Pali from January 21, 1993 through February 28, 1993, inclusive. This report has relevance to Central Issue I.

## Related investigatory material:

Reference is made to the WRT Report of Interview of Agent Pali.

Further reference is made to the memorandum of Agent Pali, dated June 4, 1993, addressed to the Chief of Special Operations Division, ATF Headquarters, in which Agent Pali provided information he discussed with House Appropriations Investigators.

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## WACO ADMINISTRATIVE REVIEW

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## MEMORANDUM OF INTERVIEW

Date: June 13, 1995

FILE TITLE: [REDACTED] WITNESS: [REDACTED] TITLE LT. TEXAS DEPT OF SAFETY (DPS) DATE OF INTERVIEW JULY 7 1993 INTERVIEWING AGENTS DICK M SUEKAWA	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: [REDACTED]

Date of interview or action: July 7, 1993Report prepared by: Dick M. SuekawaContact Address: 1617 East Crest st., Waco, TexasContact Phone Number: (817) 867-4600

On July 7, 1993, I interviewed Lt. [REDACTED] at the captioned address. He has been a Texas Department of Public Safety (DPS) Trooper for eleven years, nine of which have been in the narcotics unit.

[REDACTED] heard about the pending ATF operation against the Davidian compound about one week prior to the event. He understood the search warrant was to be served on Monday, March 1, 1993. He had discussed the case with SA Wayne Appelt and understood ATF had some information about drugs. Appelt was not specific, saying only there was some evidence of drug involvement with in the Davidian compound.

[REDACTED] said the suspected drug involvement really didn't make a difference to him, since he would have assisted the ATF in the search as a sort of reciprocity for ATF assistance in the past. All ATF had to do was ask and he and his team would have assisted in any legal search.

[REDACTED] said later that week he was notified by Sgt. Bob Wilkerson (DPD) the search was to be moved to Sunday, Feb. 28th. [REDACTED] said he notified his superiors, Don Cohn and Jim Murray. He did not inform any one else of this change.

[REDACTED] said when he arrived at the TSTC airport area, he saw the following individuals:

Lex Henderson	DEA
Brad Watson	DEA
Jay Eubanks	DEA
Andy Dunklin	DPS
Bill Johnston	AUSA
Dan Morris	IRS
Terry Lee	DPS

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## MEMORANDUM OF INTERVIEW

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FILE TITLE: [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: DICK M. SUEKAWA	WACO ADMINISTRATIVE REVIEW

Cal Ludke	SO
John Haigood	SO
Bob Wilkerson	DPS
John Cottle	DPS
Dick Wales	SO reserve officer
Gene Barber	SO
David Evans	SO

and numerous ATF agents.

[REDACTED] said upon arrival at the TSTC, he and others were briefed by Appelt and they were told they were to assist the ATF in serving a search warrant on the "Mag Bag". They got half way to the "Mag Bag" then were called back. They stayed at the TSTC for about one and half hours and while there were told to serve the warrant on the "Mag Bag", then were told not to. There seemed to be some confusion by the ATF agents at the TSTC and were finally allowed to proceed to the "Mag Bag" and upon arriving there, secured the perimeter around the building.

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## WACO ADMINISTRATIVE REVIEW

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## MEMORANDUM OF INTERVIEW

Date: June 13, 1995

FILE TITLE: [REDACTED] WITNESS: [REDACTED] TITLE: GROUP SUPERVISOR/DEA DATE OF INTERVIEW: July 8, 1993 INTERVIEWING AGENTS: SUSAN G. ROWLEY	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: [REDACTED]

Date of interview or action: July 8, 1993Report prepared by: Susan G. RowleyContact Address: Drug Enforcement Administration  
Austin, TexasContact Phone Number: [REDACTED] Beeper

As a follow up to the initial interview, [REDACTED] supplied the name of Lt. Pierson as the Lieutenant in the Texas Rangers who he had told about the independent information on the meth lab in the compound. This information had been received from a confidential informant within 2-3 weeks of the ATF raid. The information was not old information about the time when Roden had been in control of the compound, but was fresh information about the Howell/Koresh period of time. [REDACTED] stated that he would make the informant available for interview if the Treasury Review Team wanted to interview him/her. [REDACTED] stated that he also gave this information to ATF and he believes that Earl Dunagan was the one he spoke with.

In checking to ascertain which DPS lab persons were present at the CP that morning, he found out that Debbie Reagan, one of the DPS chemists, had been placed on standby, but had not actually been at the Command Post that morning. There were other DPS narcotics personnel present who had been invited by Andy Dunkley, one of the members of the DEA Waco task group. Dunkley had been requested by Henderson to invite the DPS personnel and lab personnel.

[REDACTED] stated that he had been present when Hartnett had told the ATF personnel that the FBI HRT would be coming in. He stated that there was an immediate negative reaction among the ATF agents. This reaction was not a vocal one, but one you could literally see and feel. Even [REDACTED] who was an outsider, said that this was a particularly low and demoralizing point.

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## WACO ADMINISTRATIVE REVIEW

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## MEMORANDUM OF INTERVIEW

Date: June 13, 1995

FILE TITLE: [REDACTED] WITNESS: [REDACTED] TITLE: GROUP SUPERVISOR/DEA DATE OF INTERVIEW: AUGUST 24, 1993 INTERVIEWING AGENTS: SUSAN G. ROWLEY	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: [REDACTED]

Date of interview or action: August 24, 1993Report prepared by: Susan G. RowleyContact Address: Drug Enforcement Administration  
Austin, Texas

Contact Phone Number: [REDACTED]

A DEA report (DEA 6) was received from [REDACTED] concerning the debriefing of a confidential informant who had given information which confirmed the information about the existence of a methamphetamine laboratory on the compound. As a result of a review of the DEA report by SSA Callahan, a question was raised about the timing of the information received by DEA from this informant. The report was dated in June 1993, which would have been after the fire at the compound.

I telephoned [REDACTED] and asked him when DEA had first received the information from the informant about the meth lab. [REDACTED] stated that the information may have actually been received prior to the date of the report, but would not have been before the raid on Sunday, 2/28/93. [REDACTED] stated that he had given me this information because he felt it would be important for ATF to have corroborating information of the meth lab from a separate source, even though the information was not received until after the raid and subsequent fire.

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# REPORT OF INVESTIGATION

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1. PROGRAM CODE	2. CROSS FILE	3. FILE NO. 88-93-X010	4. CROSS IDENTIFICATION 1G3-S1
5. BY: Wayne FITCH, TFO AT: Fort Worth, Texas	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	6. FILE TITLE HOWELL, Vernon	
7. <input type="checkbox"/> Closed <input type="checkbox"/> Requested Action Completed <input type="checkbox"/> Action Requested By:		8. DATE PREPARED June 27, 1993	
9. OTHER OFFICERS:			

10. REPORT RE:  
 Debriefing of a Fort Worth Police Department Source of Information

## DETAILS:

- On June 3, 1993, TFO Wayne Fitch met with a Fort Worth Police Department Cooperating Individual referred to as a Source of Information (SOI) concerning the SOI being at the Branch Davidian Compound near Waco, Texas.
- The SOI advised TFO Fitch that he/she was at the compound approximately two to three weeks before the Bureau of Alcohol Tobacco and Firearms raid.
- The SOI stated he/she was taken to the compound by a white female known only as Pebbles. The SOI stated Pebbles was very familiar with the people at the compound and arranged to sell chemicals to a person by the name of Vernon.
- The SOI stated they brought one-hundred pounds of potassium phenyl and PH papers, and as they arrived at the compound they went to a back area by a garden. The SOI stated that he/she remembered seeing some swing sets and a sand box.
- The SOI stated as they were invited inside there was a step down into the building and a large religious mural painting on the wall.
- The SOI stated that he/she remembered turning left and then right down a hall and then stepping down to a buried bus. As the SOI walked down into the bus the SOI stated he/she observed a 12,000 liter flask on a table with a chemical reaction occurring.
- The SOI stated the transaction was completed on the chemicals and the SOI and Pebbles left the compound and returned to Fort Worth, Texas.

## INDEXING SECTION:

- HOWELL, Vernon - MADDIS #3314773

11. DISTRIBUTION:	12. SIGNATURE (Agent)	13. DATE
REGION Dallas FDO	[Redacted Signature]	7-2-93
SUBDISTRICT Austin RO	[Redacted Signature]	
DISTRICT Dallas DIU	14. APPROVED (Supervisor/Agent)	15. DATE
OTHER HQ/AMRI/ODD	[Redacted Signature]	7/2/93

DEA Form 8  
 Rev. 10-92

BK:

DEA SENSITIVE  
 ONLY DISSEMINATION AUTHORITY

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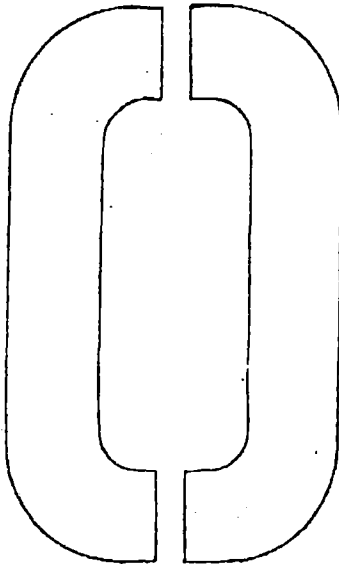
701 440 1001534 101534 830 1001534 20 65 60 508

\*\* TOTAL PAGE 00 \*\*

U.S. Department of Justice  
Drug Enforcement Administration

<b>REPORT OF INVESTIGATION</b> <i>(Continuation)</i>	1. FILE NO. MB-93-X010	2. CASE IDENTIFIER 163-S1
	3. FILE TITLE HOWELL, Vernon	
4. Page 2 of 2	5. DATE PREPARED JUNE 27, 1993	

2. PEPPLES, FMU - NADDIS Negative, white female, NFI.



00022700

DEA Form - 64  
(May 1986)

P.D.

 DRUG ENFORCEMENT ADMINISTRATION  
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JUL-21-95 12:14 FROM: TRF TASK FORCE

ID: 2026225883

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Mr. Aguilera

My profile document is still in the making. Here, I thought I would write down a few facts and observations concerning some of Vernon's key people, his structure, and some important background materials. I am sorry that birth dates and SS#'s are rare but I will do the best that I can.

#### VERNON TALKS TO REPORTER ABOUT GUNS:

In January of 1992, Australian reporter Martin King travelled to Mount Carmel to interview Vernon. This is a segment of that report.

MARTIN: Do you have guns?

VERNON: Yeah we have some.

MARTIN: Following months of negotiations, we were finally granted an audience with Vernon Howell, or, as he now prefers to be called, David Koresh. But our interview got off to a touchy start when guns were mentioned.

VERNON: [vehemently] They come in here with a gun and they start shooting at us, what would you do? Tell me. Be realistic. This is America. This is not Australia, this is not Europe. This is not where a country over-throws a bunch of people takes away there weapons, so that the people cannot argue any issues!!

#### DRUGS:

Vernon took possession of Mount Carmel some time in April of 1988 (give or take one month max). I was not present when that happened. Later, however, Vernon told me this story.

When they entered the property, according to Vernon, they discovered two things relating to drugs. The first was amphetamine manufacturing facilities, which Vernon called an amphetamine still. The second was a number of documents containing recipes and instructions regarding the manufacturing of amphetamines. The previous occupant of the property was, of course George Roden. But George allowed others to stay on the property and pay rent. Among these was one Donny Joe Harvey who later went to prison for robbery and was considered quite dangerous by the Waco authorities. It was also rumored that he was into drugs.

Upon finding these materials, according to Vernon, Vernon informed the Sheriff's Department and turned over both the facilities and the recipes to the Sheriff.

002221

As I said, I was not present when that occurred. However, two interesting factors developed. After hearing this story from Vernon (about June, '88), I figured that this evidence would lead to the conviction of one of the previous occupants of the land. However, to my knowledge, no one was even prosecuted.

Jean Smith (Australian), told me later (after we had both left the cult), that she was there when the Sheriff's Department visited Mount Carmel. She saw them interviewing Vernon. At no time did she see Vernon hand over any material or facilities to them.

From the Summer of 1988 to the time I left, there was one building on Mount Carmel which was off limits to all save Vernon. This was Lois Roden's old home. Vernon told me that it had important Branch literature which he did not want disturbed (a poor excuse). In the Spring of 1990, however, that building burned down to the ground.

One night, in 1989, when talking to a few of us (I'm the only ex-member who was there), Vernon was talking about trafficking drugs as a way of raising money. He seemed very interested in getting money through this means.

#### THE ANARCHIST'S COOK BOOK:

Vernon's lawyer/member Wayne Martin, shortly before my departure, expressed a great deal of interest in the book known as THE ANARCHIST'S COOKBOOK. He thought it could be very useful to them.

One of the very first things I did after leaving was try to obtain this book (which I understand is not something you get from your average book store). At that time, I felt that Vernon might try to silence me and I wanted to see what kind of things that book would give him access to.

It was not difficult for me to get a look at the book here in Australia. In case you are not aware, this book contains quite a lot of information on how to make explosives, poisons and just about anything destructive. I understand the book has been banned in the United States (although I could be wrong). My worry is that if it was so easy for me to access, how much easier will it be for Vernon to access, with all the money he has.

#### VERNON'S HIERARCHY

Vernon's group is highly structured. Basically, he is the absolute ruler. Under him comes Wayne Martin (his adviser). Equal with Wayne is Steve Schneider, who is the high priest. Under them are the Mighty men and the nitem. The mighty men, however, are under Vernon's command, not Steve. (I don't have the tools to draw it out for you).

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JUL 21-95 12 15 FROM TRF TASK FORCE

ID 202643860

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RCS ATIR 3370.1

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		INVESTIGATION IS ROUTINE <input checked="" type="checkbox"/> SENSITIVE <input type="checkbox"/> SIGNIFICANT		Page 1 of 4 pages
REPORT OF INVESTIGATION (Law Enforcement)				
TO Special Agent in Charge Houston Field Division Office		3. MONITORED INVESTIGATION INFORMATION (Number and Branch) CIP: HOUSTON FY-93 FIREARMS VIOLATIONS REPORT 009 MONITOR # F51192-09		
4. TITLE OF INVESTIGATION HOWELL, Vernon Wayne et.al...		5. INVESTIGATION No. (Include Suspense No.) 53110-92-1069-X		
6. TYPE OF REPORT (Check applicable boxes)		7. BUREAU PROGRAM		8. PROJECT(S)
PRELIMINARY	COLLATERAL (Request)	X	TITLE I	TARGETED OFFENDER
		X	TITLE II	TERRORIST/EXTREMIST
			TITLE VI	OC
			TITLE VII	EXPLOSIVES
FINAL	INTELLIGENCE	X	TITLE AI	SEAR
			TOBACCO	OMO
SUPPLEMENTAL	REFERRAL (Internal)		ALCOHOL	X OTHER (Specify) GENERAL

## V. DETAILS

- (X) MONTHLY STATUS  
DATE OF LAST REPORT: 11-11-92  
( ) 90-DAY STATUS  
DATE OF LAST REPORT:  
( ) PROPERTY IN CUSTODY:  
( ) CASE REPORT SUBMITTED:  
( ) THIS FILE SHOULD BE CLOSED -- ALL ACTIONS INCLUDING PROPERTY HAVE BEEN CONCLUDED
- ( ) US ATTORNEY ACTION  
PENDING  
( ) TRIAL PENDING  
( ) SENTENCE PENDING  
( ) APPEAL PENDING  
( ) FUGITIVE

This report relates to the status of an investigation initiated in response to a "Referral" from the McLennan County Sheriff's Department, Waco, Texas, concerning the alleged illegal possession and or illegal conversion/manufacturing of Title II, NFA weapons and explosives by Vernon W. Howell, AKA: David Koresh, Route 7, Box 471-B, Waco, McLennan County, Texas.

On November 13, 1992, Special Agent Davy Aguilera learned through Lt. Coy Jones, McLennan County Sheriff's Department, that an individual, who is employed with UPS, in Waco, Texas, informed him that a Marshall Keith Butler, a known machinist, occasionally does work for Howell. That Butler is also a known convicted felon in the Waco, Texas area. Lt. Jones further stated that the UPS employee did not want to reveal his name, unless it was absolutely necessary.

A Texas Department of Public Safety Criminal History reveals the following arrests/convictions concerning Marshall K. Butler:

002920

SUBMITTED BY (Name) Davy Aguilera	11. TITLE AND OFFICE Special Agent, Austin	12. DATE 12/09/
13. REVIEWED BY (Name) Larry E. Sparks	14. TITLE AND OFFICE Resident Agent in Charge	15. DATE 12/19/
16. APPROVED BY (Name)	17. TITLE AND OFFICE	18. DATE



JUL-21-95 12:15 FROM: TRF TASK FORCE

ID: 202622586

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DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS <b>REPORT OF INVESTIGATION - CONTINUATION SHEET</b> (Law Enforcement)		PAGE <u>2</u> OF <u>4</u> PAGES
TITLE OF INVESTIGATION HOWELL, Vernon Wayne et.al...		INVESTIGATION NO. 53110-92-1069-X

## DETAILS (Continued)

05-17-84 Waco Police Department - Possession of Marijuana - No disposition.

04-08-86 Waco Police Department - Possession of Methamphetamine - No Bill.

10-03-86 Waco Police Department - Possession of Methamphetamine - No disposition.

05-02-89 Waco Police Department - Possession of Drug Paraphernalia - Two counts of possession of controlled substance - No disposition.

07-15-89 Waco Police Department - Possession of Marijuana - Possession of Methamphetamine - Court disposition, convicted on 04-12-90, received 3 years probation.

01-30-92 Waco Police Department - Possession of controlled substance - Convicted, sentenced to three (3) years to the Texas Department of Corrections.

04-27-92 Paroled to McLennan County until 08-03-94.

On November 13, 1992, Special Agent Davy Aguilera met with Deputy Terry Fuller, McLennan County Sheriff's Department, who stated that on 11-6-92, at approximately 1:25 P.M., while on routine patrol near the above described compound, located at Route 7, Box 471-B, Waco, McLennan County, Texas, he heard a loud explosion coming from the north end of the compound. That while driving back to where he thought the explosion may have occurred, he saw a large cloud of grey smoke dissipating in the air on the north end of the compound. Due to the distance of the pole camera from the compound, it is very difficult to determine or distinguish the explosion which occurred on the compound from reviewing the video tape.

Also on this same date, Special Agent Aguilera learned that Randy Cervenka, the adjacent neighboring rancher next to the Howell compound, while working on his ranch on 11-8-92, at approximately 2:45 P.M., heard spurts of rifle gun fire coming from the compound.

On November 24, 1992, Special Agent Aguilera received a telephone call from a SGT. John Hackworth, Police Officer, Laverne Police Department, Laverne, California. Officer Hackworth stated that he was contacted by Robin Bunds, Laverne, California, who stated that she had some information concerning Vernon W. Howell. That she was an active member of Howell's Cult Group located in Waco, Texas, approximately two (2) years ago. That she gave birth to Howell's daughter, who is currently three years of age. That she is attempting to pursue a paternity suit on Howell for child support. That Howell is a "Mad Man", who also owns a residence at 2707 White Ave., Laverne, California. That the residence is occupied by at least five (5) of his followers. That while at the compound in Waco, Texas, Howell, would have some of his followers purchase weapons for him.

SGT. Hackworth subsequently provided Special Agent Aguilera with the following list of names of people who currently reside at the Howell

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RCS ATF R 3270.1

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		1. INVESTIGATION IS <input checked="" type="checkbox"/> ROUTINE <input checked="" type="checkbox"/> SENSITIVE <input type="checkbox"/> SIGNIFICANT		Page 1 of 8 pages
REPORT OF INVESTIGATION (Law Enforcement)				
Special Agent in Charge Houston Field Division Office		3. MONITORED INVESTIGATION INFORMATION (Number and Branch) CIP: HOUSTON FY-92 FIREARMS VIOLATIONS REPORT 011		
4. TITLE OF INVESTIGATION HOWELL, Vernon Wayne et.al		5. INVESTIGATION No. (Include Suspect No.) 53110-92-1069-X		
6. TYPE OF REPORT (Check applicable boxes)		7. BUREAU PROGRAM		8. PROJECTS
<input type="checkbox"/> PRELIMINARY	<input type="checkbox"/> COLLATERAL (Request)	<input checked="" type="checkbox"/> TITLE I	FIREARMS	TARGETED OFFENDER
		<input checked="" type="checkbox"/> TITLE II		TERRORIST/EXTREMIST
<input checked="" type="checkbox"/> STATUS	<input type="checkbox"/> CURRENT (Include Copy)	<input type="checkbox"/> TITLE III	EXPLOSIVES	OCB
		<input type="checkbox"/> TITLE IV		TRJ
<input type="checkbox"/> FINAL	<input type="checkbox"/> INTELLIGENCE	<input checked="" type="checkbox"/> TITLE XI	TOBACCO	SEAR
				OMO
<input type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> REFERRAL (Internal)	<input type="checkbox"/> ALCOHOL	<input checked="" type="checkbox"/>	OTHER (Specify) GENERAL
9. DETAILS:				
(X) MONTHLY STATUS DATE OF LAST REPORT: 12-21-92 ( ) 90-DAY STATUS DATE OF LAST REPORT: ( ) PROPERTY IN CUSTODY: ( ) CASE REPORT SUBMITTED: ( ) THIS FILE SHOULD BE CLOSED -- ALL ACTIONS INCLUDING PROPERTY HAVE BEEN CONCLUDED				
( ) US ATTORNEY ACTION PENDING ( ) TRIAL PENDING ( ) SENTENCE PENDING ( ) APPEAL PENDING ( ) FUGITIVE				

This sensitive criminal investigation involves Vernon Wayne Howell and several others who are suspected of a variety of violations including 26 U.S.C. 5861, manufacture of destructive devices.

This group of people have been living in a commune type of setting in a rural part of Texas. In the last few years they have been involved in enough disturbances to warrant the attention of the local sheriff's department, McLennan County Sheriff's Department in Waco, Texas. The information obtained by them and recent information obtained by ATF agents indicates this group of people has accumulated automatic weapons, built underground shooting ranges, and acquired raw materials that can be used to build handgrenades and bombs. The below list is included in this report in response to a request for a report listing the persons identified as subjects of this investigation. This list is still growing as more persons are identified as part of this group and additional identifying information is obtained on people already on the list.

002032

SUBMITTED BY (Name) Dora Aguilera	11. TITLE AND OFFICE Special Agent, Austin	12. DATE 12/31/92
13. TITLE AND OFFICE Earl K. Dunagan	14. TITLE AND OFFICE Acting RAIC, Austin	15. DATE 12/31/92
	16. TITLE AND OFFICE	17. DATE

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS <b>REPORT OF INVESTIGATION - CONTINUATION SHEET</b> (Law Enforcement)		PAGE <u>2</u> OF <u>8</u> PAGES
TITLE OF INVESTIGATION <b>HOWELL, Vernon Wayne et.al</b>		INVESTIGATION NO. <b>53110-92-1069-X</b>
DETAILS (Continued)		
<b>LIST OF NAMES OF PERSONS FULLY IDENTIFIED</b>		
<u>Bunds, Donald, Elliot:</u>	white, male, 6', DOB: 10-26-30, Texas DL# 06820367, address: Rt 7, Box 471B, Waco, Tx, 76705	
Occupation/Position in relation to the group:	Certified pilot-owner of private FAA registered piper aircraft, Serial number 24-3617. Mechanical Engineer.	
<u>Fatta, Paul Gordon:</u>	white, male, 5'8", 155#, brown hair, green eyes, DOB: 2-28-58, born in California, SS# 569-17-9109, FBI# 665653HA6.	
Occupation/Position:	One of Howell's close associates - Extremely wealthy - Rumor had it in the cult commune, that Paul and the family made their money through drug trafficking. Financial institution reporting negotiable instruments or wire transfers of \$15,000.	
Criminal History:	11-03-87 - Arrested - McLennan County Sheriff's Office, Waco, Texas - Charged with attempted murder - Disposition - 04-25-88 - found not guilty by a jury trial.	
<u>Friesen, Raymond:</u>	White, male, DOB: 06-12-52.	
Occupation/Position:	Unknown.	
Criminal History:	United States Customs Service (USCS), Pembina, N.D., alleged general smuggling - stolen merchandise/alleged smuggling marijuana and pornography. Subject was passenger in motor home seized at POE Pembina on 9/20/89 - subject was traveling with "Los Bravos Gang Members"	
<u>Hipsman, Peter James:</u>	white, male, 5'10", 155#, brown hair, green eyes, DOB: 3-15-65, born in California, SS# 071-62-7992, FBI# 664692HA0, address: POB 154081 Rt 7, Waco, Tx, 76705,	

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DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		PAGE <u>3</u>
REPORT OF INVESTIGATION - CONTINUATION SHEET (Law Enforcement)		OF <u>8</u> PAGES
FILE OF INVESTIGATION	INVESTIGATION NO.	
HOWELL, Vernon Wayne et.al	53110-92-1069-X	
DETAILS (Continued)		
Occupation/Position:	One of Howell's close associates - Occupation is unknown at this time.	
Criminal History:	11-03-87 - Arrested McLennan County Sheriff's Department - Charged with attempted murder - Disposition: 04-25-88 - found not guilty by a jury trial.	
<u>Houtman, Floyd Leon:</u>	black, male, 5'11", 175#, brown hair, brown eyes, DOB: 11-26-31, born in Massachusetts, Texas DL# 03221199, SS# [REDACTED], FBI# [REDACTED]	
Occupation/Position:	One of Howell's close associates. Houtman was a cook in the U.S. Army. Houtman is also a former boxer, who is believed to have worked in a bomb factory, responsible mainly for lifting items. Houtman's wife Judy left the commune in 1986, along with her three children.	
Criminal History:	11-03-87 - Arrested McLennan County Sheriff's Department - Charged with attempted murder - Disposition: 04-25-88 - found not guilty by a jury trial.	
<u>Howell, Vernon Wayne:</u>	AKA David Koresh, white, male, 5'11", 165#, brown hair, brown eyes, DOB: 8-17-59, born in Houston, Texas, Texas DL# 06328661, address: Route 7 box 471B, Waco, Tx. 76705, and Rt. 3 box 125B, Wylie, Texas, 75098.	
Occupation/Position:	Leader of the Cult Group "Branch Davidian" movement, Route 7, Box 471B, Waco, Texas.	
Criminal History:	11-03-87 - Arrested McLennan County Sheriff's Department - Charged with attempted murder - Disposition: 04-25-88 - found not guilty by a jury trial.	
<u>Lawson, Margaret:</u>	White, female; DOB: 11-12-35.	
Occupation/Position:	Unknown.	

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DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		PAGE <u>4</u>
REPORT OF INVESTIGATION - CONTINUATION SHEET (Law Enforcement)		OF <u>8</u> PAGES
FILE OF INVESTIGATION	INVESTIGATION NO.	
HOWELL, Vernon Wayne et.al	53110-92-1069-X	
DETAILS (Continued)		
Criminal History:	USCS - Los Angeles, Ca., subject arrested for possession of 4,970 grams of cocaine and failure to declare monetary instruments in excess of \$5,000, 11/12/88. FAA records indicate that this subject is a certified pilot, flight engineer or	
Martin, Shelia:	White/female; DOB: 06-12-34.	
Occupation/Position:	Unknown	
Criminal History:	USCS - non-suspect, private aircraft inspection, entry date: 5/11/84.	
Jones, David Michael:	white, male, 5'11", 155#, DOB: 10-18-54, born in Texas, blue eyes, Texas DL# 02523933, SS# [REDACTED], FBI# [REDACTED]	
Occupation/Position:	One of Howell's close associates. Jones served in the U.S. Air Force and currently a U.S. Postal Service employee (mail man). From information received, Jones is a fanatic and considered extremely dangerous.	
Criminal History:	11-03-87 - Arrested McLennan County Sheriff's Department - Charged with attempted murder - Disposition: 04-25-88 - found not guilty by a jury trial.	
Jones, Paul James:	white, male, 5'11", 190#, grey hair, blue eyes, DOB: 12-13-39, SS# [REDACTED], address: [REDACTED], Other address: [REDACTED]	
Occupation/Position:	Jones is related to David Michael Jones, but is not and has never been a cult member. Paul is also a mail man in Redding, California, who is allegedly a firearms and explosives expert. Information received indicated that Paul, at one time, visited the commune in Waco, Texas, specifically to teach the group how to manufacture explosives and firearms.	
Criminal History:	No prior criminal history.	

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REPORT OF INVESTIGATION - CONTINUATION SHEET (Law Enforcement)		OF 8 PAGES
FILE OF INVESTIGATION	INVESTIGATION NO.	
HOWELL, Vernon Wayne et.al	53110-92-1069-X	
DETAILS (Continued)		
<u>Kendrick, W. Woodrow:</u>	white, male, DOB: 4-4-30, address: Route 7, P.O. Box 471-B, Waco, Texas.	
Occupation/Position:	Unknown at this time.	
Criminal History:	No prior criminal history.	
<u>Riddle, James Loye:</u>	Riddle, James Loye, white, male, 5'11", 140#, Brown hair, blue eyes, DOB: 4-25-60, born in North Carolina, Texas DL# 12755787, FBI# [REDACTED], address: Rt. 7 Box 471B, Waco, Tx. 76705.	
Occupation/Position:	One Howell's close associates. Riddle's position in Howell's organizational structure is unknown at this time.	
Criminal History:	11-03-87 - Arrested - McLennan County Sheriff's Department - Charged with attempted murder - Disposition - found not guilty by a jury trial.	
<u>Schroeder, Michael:</u>	White/male; DOB: 07-17-48.	
Occupation/Position:	Unknown	
Criminal History:	USCS - Bellechasse, La., subject of current investigation, entry date: 12/6/90. Subject arrested for possession of 467 grams of cocaine, Miami, Fl., entry date: 4/3/82.	
<u>Schoroeder, Kathryn:</u>	White/female; DOB: 03-08-57.	
Occupation/Position:	Unknown	
Criminal History:	USCS - El Paso, Texas, subject arrested for possession of 5/10 grams of marijuana, 5/10 grams of cocaine, and 4 tablets of dangerous drugs, entry date: 9/20/90. USCS - Pembina, N.D., prohibited importation of alcoholic beverages.	
<u>Summers, Gregory Allen:</u>	white, male, 6', blue eyes, DOB: 1-9-65, SS# [REDACTED] address: Rt. Box 471B, Waco, Tx. 76705	
Occupation/Position:	One of Howell's close associates. From	

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DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		PAGE <u>6</u>
REPORT OF INVESTIGATION - CONTINUATION SHEET		OF <u>8</u> PAGES
(Law Enforcement)		
TITLE OF INVESTIGATION HOWELL, Vernon Wayne et.al		INVESTIGATION NO. 53110-92-1069-X
DETAILS (Continued)		
	information obtained, Summers is a former drug user, originally from New York. He joined the commune in 1987, while in Hawaii.	
Criminal History:	11-03-87 - Arrested - McLennan County Sheriff's Department - Charged with attempted murder - Disposition - found not guilty by a jury trial	
<u>Sylvia, Stanley Carl:</u>	white, male, brown hair, brown eyes, 5'6", 155#, DOB: 12-14-37, born in Massachusetts, SS# [REDACTED], FBI# [REDACTED], Texas DL# 08231293, address: [REDACTED]	
Occupation/Position:	Sylvia served in the U.S. Air Force as a radio operator during the 1950's. His position in Howell's organizational structure is unknown.	
Criminal History:	11-03-87 - Arrested - McLennan County Sheriff's Department - Charged with attempted murder - Disposition - found not guilty by a jury trial.	
SUBJECTS NOT FULLY IDENTIFIED		
<u>Wendel, Jaydeen:</u>	white female, DOB: unknown.	
Occupation/Position:	From information obtained, Jaydeen, is a former Police Officer, who was employed by the Honolulu Police Department, Honolulu, Hawaii. Jaydeen's maiden name is Cornwell. Jaydeen's job at the commune, was to provide physical training and conduct target practice for all of the women at the commune. Jaydeen attempted to seek employment with the U.S. Immigration & Naturalization Service, (INS) but was declined employment. It is alleged, that Howell wanted a group member to work for INS.	
Criminal History:	Unknown	
<u>Wendel, Mark:</u>	white male, DOB: unknown.	
Occupation/Position:	Mark is Jaydeen's husband, who is also a former drug user. It is alleged, that Mark is trained in the Martial Arts, and hold a degree in Karate.	
Criminal History:	Unknown	

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DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS REPORT OF INVESTIGATION - CONTINUATION SHEET (Law Enforcement)		PAGE 7 OF 8 PAGES
TITLE OF INVESTIGATION HOWELL, Vernon Wayne et.al		INVESTIGATION NO. 53110-92-1069-X
DETAILS (Continued)		
<u>Little, Jeff:</u>	white male, DOB: unknown.	
Occupation/Position:	Jeff is a computer programmer, who holds a green belt in Karate. Jeff is originally from the State of Michigan, who attended high school in Barrie Creek, Michigan and college in Barrien Springs, Michigan.	
Criminal History:	Unknown	
<u>Whitecliff, Kevin:</u>	White male, DOB: unknown.	
Occupation/Position:	Kevin is allegedly a former prison guard, who joined the group in 1987. Kevin allegedly left the group in 1990 and recently rejoined.	
Criminal History:	Unknown	
<u>Gyarfas, Oliver Sr.:</u>	White male, DOB: unknown.	
Occupation/Position:	It is alleged that Oliver has connections to the Australian underworld. That he is very unpredictable, quite hostile and a heavy drug user.	
Criminal History:	Unknown	
<u>Gent, Peter:</u>	White male, DOB: 06-28-68 - Australian Citizen.	
Occupation/Position:	It is alleged that Peter is a former drug user, who is highly unstable. He tends to feel very strongly for whatever he does. It is feared that if Howell orders him to kill, that he will do it without hesitation.	
Criminal History:	No prior criminal history in the United States.	
<u>Jewell, Sherri:</u>	White female, DOB: 02-10-50.	
Occupation/Position:	Sherri is a certified school teacher, who conducts classes for the children at the commune.	
Criminal History:	No prior criminal history.	
<u>Jones, Michele:</u>	White female, DOB: 07-04-74.	

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DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		PAGE <u>8</u> OF <u>8</u> PAGES
REPORT OF INVESTIGATION - CONTINUATION SHEET (Law Enforcement)		
FILE OF INVESTIGATION HOWELL, Vernon Wayne et.al		INVESTIGATION NO. 53110-92-1069-X
DETAILS (Continued)		
Occupation/Position: Unknown		
Criminal History: No prior criminal history.		
<p>On December 28, 1992, Special Agent Davy Aguilera received some information via Computer Services Mail, from Marc Breault, Melbourne, Australia, concerning the person last known as the leader of the Waco, Texas. It is alleged, that a one, Doreen Saipaia, citizen of New Zealand was an active member of the commune from the Spring of 1990 to the Fall of 1991. That while at the commune, she (Doreen), was held against her own free will. That she was repeatedly assaulted, abused and raped. That Stan Sylvia, a long time identified cult member, was the chief culprit, although, Howell at times physically abused her. Doreen, prior to leaving the United States, allegedly lodged a complaint with the San Francisco Police Department, against Howell, and forwarded a copy to the McLennan County Sheriff's Department.</p> <p>A copy of this complaint will be obtained from the McLennan County Sheriff's Department. RAC Bill Buford, Little Rock, Arkansas, will attempt to contact Doreen in New Zealand through her sister, Poia Vaega, who is also a former member of the group. This will enable ATF Agents to obtain current information, concerning Howell, and his illegal activities. This will further enable SRT team leaders to obtain tactical information, concerning the existing structures on the compound.</p> <p>Also on this same date, December 28, 1992, Special Agent Aguilera received a Report of Technical Examination from Firearms Technology Branch, Washington, D.C., concerning firearm parts and components that have been shipped to Howell. Based on the list of described items forwarded to Firearms Technology Branch, the items are consistent with component parts and accessories for AR-15 rifles or M16 machineguns. That the described parts and accessories are not firearms as defined in 18 U.S.C. Chapter 44, or 26 U.S.C. Chapter 53.</p> <p>On December 29, 1992, a list of all of the aforementioned identified subjects, were forwarded to Financial Crimes Enforcement Network, (FinCen), Arlington, Va., so that these names could be entered in the appropriate commercial and law enforcement databases.</p>		
Investigation Continues....		

AFFIDAVIT

Affiant alleges the following grounds for arrest of defendant:

I, Davy Aguilera, being duly sworn, depose and state that:

I am a Special Agent with the U. S. Treasury Department, Bureau of Alcohol, Tobacco and Firearms. I have been an approximately 5 years. This affidavit is based on my own investigation as well as information furnished to me by other law enforcement officers and concerned citizens.

As a result of my training and experience as a Special Agent for the Bureau of Alcohol, Tobacco and Firearms, I am familiar with the Federal firearm and explosive laws and know that it is unlawful for a person to manufacture, possess, transfer, or to transport or ship in interstate commerce machineguns, machinegun conversion parts, or explosives which are classified, by Federal law, as machineguns, and/or destructive devices, including any combination of parts either designed or intended for use in converting any firearm into a machinegun, or into a destructive device as defined by Federal law, and from which a destructive device may be readily assembled, without them being lawfully registered in the National Firearms Registration and Transfer Record, U.S. Treasury Department, Washington, D.C.

During my 5 years experience with the Bureau of Alcohol, Tobacco and Firearms, I have investigated persons who have unlawfully possessed, transferred or shipped in interstate or foreign commerce firearms and/or explosive devices which were not registered to them with the National Firearms Registration and Transfer Record, and have successfully participated in the prosecution of several of these individuals.

On June 4, 1992, I met with Lieutenant Gene Barber, McLennan County Sheriff's Department, Waco, Texas, who has received extensive training in explosives classification, identification and the rendering safe of explosive devices and has been recognized in Federal Court as an expert witness in this field. Lt. Barber stated that he had received information in May 1992, from an employee of United Parcel Service, Waco, Texas, that from April through June of 1992, several deliveries had been made to a place known as the "Mag-Bag", Route 7, Box 555-B, Waco, Texas, 76705, located on Farm Road number 2491, in the names of Mike Schroeder and David Koresh, which the UPS employee believed to be firearms components and explosives. Through my investigation, I know that the place known as the "Mag-Bag" is a small tract of land located at the above address which has two metal buildings located on it.

The name "Mag-Bag" comes from the shipping label which is accompanied many items shipped to the above address. I and other agents have personally observed vehicles consistently over the past six months at the "Mag-Bag" location which are registered to Vernon Wayne Howell, aka: David Koresh. Lieutenant Barber further stated that the UPS employee, Larry Gilbreath, became suspicious and concerned about the deliveries, most of which were shipped Cash On Delivery, (C.O.D.) because of their frequency and because of the method used by the recipient to receive the shipments and to pay for them.

Lieutenant Barber explained that David Koresh was an alias name used by Vernon Wayne Howell and operated a religious cult commune near Waco, Texas, at a place commonly known as the Mount Carmel Center, which is one of the premises to be searched and more specifically described above. I have learned from my investigation, particularly from my discussions with former cult members that Vernon Howell adopted the name David Koresh more than a year ago. The name "David Koresh" was chosen by Howell because Howell believed that the name helped designate him as the messiah or the anointed one of God. Lieutenant Barber further related that he was told by Gilbreath that he has been making deliveries to the "Mag Bag" and the Mount Carmel Center on Double EE Ranch Road, Waco, Texas, for several years, but he had never been suspicious of any of the deliveries until 1992. Gilbreath became concerned because he made several C.O.D. deliveries addressed to the "Mag-Bag", but when he would stop at that location he was instructed to wait while a telephone call was made to the Mount Carmel Center by the person at the "Mag-Bag", usually Woodrow Kendrick or Mike Schroeder, notifying the person who answered the phone at the Mount Carmel Center that UPS was coming there with a C.O.D. delivery, after which Gilbreath would be instructed to drive to the Mount Carmel Center to deliver the package and collect for it. That on those occasions when he was at the Mount Carmel Center to deliver and collect for the C.O.D. packages. He saw several manned observation posts, and believed that the observers were armed.

Lieutenant Barber stated that he was told by Larry Gilbreath (UPS) that in May of 1992 two cases of inert hand grenades and a quantity of black gun powder were delivered by him to the "Mag-Bag." The source of these shipments was unknown to Gilbreath.

On June 9, 1992, I was contacted by Lieutenant Barber who told me that he had learned from Larry Gilbreath that in June of 1992, the United Parcel Service delivered ninety (90) pounds of powdered aluminum metal and 30 to 40 cardboard tubes, 24 inches in length and 1 1/4 to 1 1/2 inches in diameter, which were shipped from the Fox Fire Company, Pocatella, Idaho, to "Mag-Bag." From another shipper whose identity is unknown, two parcels containing a total of sixty (60), M-16/AR-15 ammunition magazines were delivered by UPS to the "Mag-Bag" on June 8, 1992. I know based upon my training and experience that an AR-15 is a semi-automatic rifle

practically identical to the M-16 rifle carried by United States Armed Forces. The AR-15 rifle fires .223 caliber ammunition and, just like the M-16, can carry magazines of ammunition ranging from 30 to 60 rounds of ammunition. I have been involved in many cases where defendants, following a relatively simple process, convert AR-15 semi-automatic rifles to fully automatic rifles of the nature of the M-16. This conversion process can often be accomplished by an individual purchasing certain parts which will quickly transform the rifle to fire fully automatic. Often times templates, milling machines, lathes and instruction guides are utilized by the converter.

Lieutenant Barber stated on the following background information about the Mount Carmel Center commune, which is located at Rt. 7, Box 471-B, Waco, Texas, and consists of some seventy (70) acres of land, occupied by Vernon W. Howell, a/k/a David Koresh and others.

The property was once owned and occupied by George Buchanan Roden, who once was an unannounced candidate for the office of President of the United States. Roden inherited the property sometime in the 1950's, and beginning about January 1986 established and led a religious cult group with about twenty (20) followers. He claimed to be the Prophet of the group. The property at that time was known as the "Elk Property/Mt. Carmel Center." About this same time, Roden was in jeopardy of losing the property by foreclosure due to delinquent taxes which had not been paid since 1968.

About this same time, Vernon Wayne Howell, had established a similar group in Palestine, Texas, known as the Branch Davidian Seventh-Day Adventists. Sometime in 1987, Howell, laid claim to ownership of the Mr. Carmel Center property and wanted to acquire it by any means possible. On November 3, 1987, Howell led an armed group of eight men into Roden's camp and a 45-minute gun battle ensued. Roden was shot in the finger and was the only person injured.

Eight people, including Vernon W. Howell and Paul Gordon Fatta were arrested by the McLennan County Sheriff's Department, Waco, Texas, and were indicted for attempted murder by a McLennan County Grand Jury. All eight subjects were tried in State court at Waco, Texas, and were acquitted of the charges of attempted murder by a jury.

After the armed assault by Howell and his followers, George Roden vacated the property. In 1987, the property was taken over by Howell and his cult group. The taxes owed on the Mt. Carmel Center have been paid by Howell's group. His cult has grown to about seventy (70) to eighty (80) people which includes men, women and children who now live on the Mount Carmel Center property.

Lieutenant Barber furnished me with recently taken aerial photographs of the Mount Carmel Center which had been taken by

Captain Dan Weyenberg of the McLennan County Sheriff's Department, Waco, Texas. Among the things noted in the photographs was a buried bus near the main structure and an observation tower, approximately three or four stories tall with windows on all four sides enabling a view from the structure of 360 degrees.

I was also advised by Lieutenant Barber that Robert Cervenka, a known long time McLennan County citizen, who lives near the Mount Carmel Center compound, had, on several occasions, from January through February of 1992, heard machinegun fire coming from the compound property. Mr. Cervenka offered law enforcement authorities his assistance to do further investigation.

On July 21, 1992, I met with Robert L. Cervenka, Route 7, Box 103, Riesel, Texas. Mr. Cervenka farms the property surrounding the east side of the Mount Carmel property. Mr. Cervenka stated that he has farmed that area since 1948. From about January and February of 1992 he has heard machinegun fire on the Vernon Howell property during the night hours. He is familiar with and knows the sound of machinegun fire because he did a tour overseas with the U.S. Army. He believes that some of the gunfire he heard was being done with 50 caliber machineguns and possibly M-16 machineguns.

On November 13, 1992, I spoke with Lieutenant Gene Barber who told me that Mr. Cervenka, whose ranch is adjacent to the Mount Carmel Property, had reported hearing bursts of gunfire from the Mount Carmel compound on November 8, 1992, at approximately 2:45 p.m.

On June 8, 1992, based on information gained from Gilbreath by Lieutenant Barber, I interviewed Dave Hauptert, Olympic Arms Inc., Olympia, Washington, a company which had shipped several parcels to David Koresh at the "Mag-Bag", Route 7, Box 555-B, Waco, Texas. Mr. Hauptert told me that the records of Olympic Arms Inc., indicated that approximately forty-five (45) AR-15/M16 rifle upper receiver units, with barrels of various calibers, had been shipped from March through April of 1992 to the Mag-Bag Corporation for a total cost of \$11,107.31, cash on delivery.

On January 13, 1993, I interviewed Larry Gilbreath in Waco, Texas, and confirmed the information which had previously been related to me by Lieutenant Barber. Mr. Gilbreath told me that although he had been making deliveries at the "Mag Bag" and the Mount Carmel Center for quite some time, his suspicion about the packages being delivered to those places never was aroused until about February 1992. At that time the invoices accompanying a number of packages reflected that they contained firearm parts and accessories as well as various chemicals. He stated that in May 1992, a package which was addressed to the "Mag Bag" accidentally broke open while it was being loaded on his delivery truck. He saw that it contained three other boxes the contents of which were "pineapple" type hand grenades which he believed to be inert. He stated that there were about fifty of the grenades and that he later delivered them to the

Mount Carmel Center. The Mount Carmel Center is that tract of land depicted in the photograph labeled "Attachment B", with the main residential structure being depicted in "Attachment C."

Mr. Gilbreath stated that these suspicious packages were usually addressed to the "Mag Bag" or to David Koresh. When he would stop to deliver them to the "Mag Bag", he was met most of the time by Woodrow Kendrick, and on other occasions by Steve Schneider. They would have him wait while they telephoned the Mount Carmel Center to tell them that UPS was coming with a C.O.D. package. He would be instructed to take the package(s) to the Mount Carmel Center. Upon arriving at the Mount Carmel Center, he was usually met by Perry Jones or, on occasion, by Steve Schneider, who would pay the C.O.D. charges in cash and would accept delivery of the shipments.

On this same date, June 8, 1992, I interviewed Glen Deruiter, Manager, Sarco Inc., Stirling, New Jersey, and learned from him that in May of 1992, their company shipped one M-16 parts set kit with a sling and magazine to the "Mag-Bag" in the name of David Koresh. The total value of these items was \$284.95.

Also on June 8, 1992, I interviewed Cynthia Aleo, Owner/Manager, Nesard Gun Parts Company, Barrington, Illinois, and learned from her that in May of 1992, her company shipped to the "Mag-Bag", two (2) M-16 machinegun car kits and two (2) M-16 machinegun EZ kits. These kits contain all the parts of an M-16 machinegun, except for the lower receiver unit which is the "firearm" by lawful definition. Ms. Aleo stated that the total amount of sales to the Mag-Bag was \$1227.00. Within the past month, I have spoken with Curtis Bartlett, Firearms Technician with BATF and have learned that Nesard Company has been under investigation in the past by ATF for engaging in a scheme to supply parts which would enable individuals to construct illegal weapons from various component parts.

On June 9, 1992, I requested that a search of the records of the National Firearms Registration and Transfer Record, Washington, D.C., to determine if Vernon W. Howell and/or Paul G. Fatta, one of Howell's closest followers, had any machineguns or other NFA weapons registered to them. The result of the search was negative.

On this same date, June 9, 1992, I requested a search of the records of the Firearms Licensing Section of the Bureau of Alcohol, Tobacco and Firearms, Atlanta, Georgia, to determine if Howell, Fatta or the "Mag-Bag" Corporation were licensed as Firearms dealers or manufacturers. The result of this search was negative.

On June 10, 1992, I requested a search of the records of the Firearms Licensing Section of the Bureau of Alcohol, Tobacco and Firearms, Atlanta, Georgia, to determine if David Koresh, Howell's alias name, or David M. Jones, a known associate of Howell, were licensed as Firearms dealers or manufacturers. The result of this

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search was negative.

On June 23, 1992, I spoke with ATF compliance Inspector Robert Souza, Seattle, Washington, who inquired about the Mag Bag Corporation, Route 7, Box 555, Waco, Texas. He had received some invoices reflecting a large quantity of upper receivers and AR-15 parts being shipped to "Mag Bag", Waco, Texas, from Olympic Arms Inc., 624 Old Pacific Hwy., S.E. Olympia, Washington. Inspector Souza faxed me copies of invoices, reflecting purchases of twenty (20) AR-15 upper receiver units with barrels by the "Mag Bag" March 1992 and June, 1992. These items are in addition to the items referred to above.

As a result of my investigation of shipments to Howell/Koresh and Mike Schroeder at the "Mag-Bag" Corporation, Waco, Texas, through the United Parcel Service, and the inspection of the firearms records of Henry McMahon, dba, Hewitt Hand Guns, Hewitt, Texas, I have learned that they acquired during 1992, the following firearms and related explosive paraphernalia:

- One hundred four (104), AR-15/M-16, upper receiver groups with barrels.
- Eight thousand, one hundred (8,100) rounds of 9mm and .223 caliber ammunition for AR-15/M-16.
- Twenty (20), one hundred round capacity drum magazines for AK-47 rifles.
- Two hundred sixty (260), M-16/AR-15, magazines.
- Thirty (30) M-14, magazines.
- Two (2) M-16 EZ kits.
- Two (2) M-16 Car Kits.
- One M-76 grenade launcher.
- Two hundred (200) M-31, practice rifle grenades.
- Four (4) M-16 parts set Kits "A".
- Two (2) flare launchers.
- Two cases, (approximately 50) inert practice hand grenades.
- 40-50 pounds of black gun powder.
- Thirty (30) pounds of Potassium Nitrate.
- Five (5) pounds of Magnesium metal powder.
- One pound of Igniter cord. (A class C explosive)
- Ninety-one (91) AR/15 lower receiver units.
- Twenty-six (26) various calibers and brands of hand guns and long guns.
- 90 pounds of aluminum metal powder.
- 30-40 cardboard tubes.

The amount of expenditures for the above listed firearm paraphernalia, excluding the (91) AR-15 lower receiver units and the (26) complete firearms, was in excess of \$44,300.

From my investigation, I have learned that a number of shipments to the "Mag-Bag" have been from vendors with questionable trade practices. One is presently under investigation by the Bureau of

Alcohol, Tobacco and Firearms, for violations of the National Firearms Act, which prohibits unlawful possession of machineguns, silencers, destructive devices, and machinegun conversion kits.

Because of the sensitivity of this investigation, these vendors have not been contacted by me for copies of invoices indicating the exact items shipped to the Mag-Bag.

On November 13, 1992, I interviewed Lieutenant Coy Jones, McLennan County Sheriff's Department, Waco, Texas, and learned from him that he had spoken with an employee of the United Parcel Service, Waco, Texas, who wished to remain anonymous. This person told Jones that Marshal Keith Butler, a relative of the person who wishes to remain anonymous, is a machinist by trade, and is associated with Vernon Howell.

The records of the Texas Department of Public Safety reflect that Butler has been arrested on seven (7) occasions since 1984 for unlawful possession of drugs. Two of the arrests resulted in convictions for possession of a controlled substance. Butler's latest arrest and conviction was in January 1992. Butler received a sentence of three (3) years in the Texas Department of Corrections. In April 1992 Butler was paroled to McLennan County, Texas.

On November 13, 1992, I interviewed Terry Fuller, a deputy sheriff for the McLennan County Sheriff's Department, Waco, Texas, and learned from him that on November 6, 1992, at approximately 1:25 p.m., while on routine patrol in the area of the Mount Carmel Center, the property controlled by Vernon Howell, he heard a loud explosion in the area of the north part of the Mount Carmel property. As he drove toward the area where he thought the explosion had occurred, he observed a large cloud of grey smoke dissipating from ground level on the north end of the Mount Carmel property.

On December 7, 1992, I spoke with Special Agent Carlos Torres, Bureau of Alcohol, Tobacco and Firearms, Houston, Texas, who had been assisting me in a portion of this investigation. He related to me the results of his interview on December 4, 1992, with Joyce Sparks, Texas Department of Human Services, Waco, Texas. Special Agent Torres told me that Ms. Sparks received a complaint from outside the State of Texas, that David Koresh was operating a commune type compound, and that he was sexually abusing young girls. Ms. Sparks stated that on February 27, 1992, she along with two other employees of the Texas Department of Human Services and two McLennan County Sheriff's Deputies responded to the complaint. They went to the Mount Carmel Center compound located east of Waco in McLennan County. When they arrived at the compound, they were met by a lady who identified herself as Rachel Koresh, the wife of David Koresh.

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Mrs. Koresh was reluctant to talk with Ms. Sparks because David Koresh was not there. She had strict orders from him not to talk with anyone unless he was present. Ms. Sparks finally was able to convince Mrs. Koresh to allow her to talk with some of the children who were present. She talked to a young boy about 7 or 8 years old. The child said that he could not wait to grow up and be a man. When Ms. Sparks asked him why he was in such a hurry to grow up, he replied that when he grew up he would get a "long gun" just like all the other men there. When Ms. Sparks pursued the subject, the boy told her that all the adults had guns and that they were always practicing with them.

Ms. Sparks also told Special Agent Torres that she was escorted thorough part of the building where she noted a lot of construction being performed. She also said that she could not determine how many people were in the group, but estimated about sixty (60) to seventy (70) people there including men, women and children. She stated that she saw about 15 to 20 adult males there.

Ms. Sparks also said that on April 6, 1992, she visited the compound again. On this occasion she talked with David Koresh. She asked Koresh about the firearms which she had been told by the small child. Koresh admitted that there were a few firearms there, but said that most of the adults did not know of them, and that there were too few to be of any significance. Ms. Sparks said that when she pressed Koresh about the firearms and their location at the compound, he offered to show her around. He requested that she wait about 30 minutes until he could get the other residents out of the building so they would not see where he had the firearms stored. After a period of time, Ms. Sparks was escorted through part of the building by Koresh. She noted that there was more construction activity and that the inside of the structure looked quite different from her previous visit. Each time Ms. Sparks asked Koresh about the location of the firearms, he would tell her that they were in a safe place where the children could not get to them. He then would change the subject.

Ms. Sparks said that she noticed a trap door in the floor at one end of the building. When she inquired about it, Koresh allowed her to look into the trap door. She could see a ladder leading down into a buried school bus from which all the seats had been removed. At one end of the bus she could see a very large refrigerator with numerous bullet holes. She also saw three long guns lying on the floor of the bus, however, she did not know the make or caliber of them. She stated that there was no electricity in the bus. Everything she saw was with the aid of a pen light. When questioned by Ms. Sparks, Koresh said that the bus was where he practiced his target shooting in order not to disturb his neighbors.

Ms. Sparks felt the entire walk through the compound was staged for her by Koresh. When she asked to speak with some of the children

and other residents, Korash refused, stating they were not available. She said that during her conversation with Korash, he told her that he was the "Messenger" from God, that the world was coming to an end, and that when he "reveals" himself the riots in Los Angeles would pale in comparison to what was going to happen in Waco, Texas. Korash stated that it would be a "military type operation" and that all the "non-believers" would have to suffer.

On December 11, 1992, I interviewed Robyn Bunds in California. Robyn Bunds is a former member and resident of Vernon Howell's commune in Waco, Texas. She told me that in 1988, at the age of 19, she gave birth to a son who was fathered by Vernon Howell. Her departure from the commune in 1990 was a result of Howell becoming progressively more violent and abusive.

While she was there, she and the other residents were subjected to watching extremely violent movies of the Vietnam war which Howell would refer to as training films. Howell forced members to stand guard of the commune 24 hours a day with loaded weapons. Howell always was in possession of firearms and kept one under his bed while sleeping. Robyn stated that her present residence in California belonged to her parents. For a period of several years Howell had exclusive control of the residence and used it for other members of his cult when they were in California. It was later relinquished by Howell to Robyn's mother. In June 1992, while she was cleaning one of the bedrooms of the residence she found a plastic bag containing gun parts. She showed them to her brother, David Bunds, who has some knowledge of firearms. He told her that it was a machinegun conversion kit. She stored the gun parts in her garage because she felt certain that Howell would send some of his followers to pick them up. Subsequent to her discovery of the conversion kit, Paul Fatta, Jimmy Riddle, and Neal Vaega, all members of Howell's cult and residents of the commune in Waco, came from Waco, Texas, to California and picked up the conversion kit.

On December 12, 1992, I interviewed Jeannine Bunds, the mother of Robyn and David Bunds. She told me that she was a former member of Howell's group in Waco, Texas, having left there in September 1991. She is a registered nurse and was working in that capacity at the Good Samaritan Hospital, Los Angeles, California. While at Howell's commune in Waco, she participated in live fire shooting exercises conducted by Howell. She saw several long guns there, some of which she described as AK-47 rifles. Mrs. Bunds described the weapon to me and was able to identify an AK-47 from among a number of photographs of firearms shown to her by me. I believe that she is well able to identify an AK-47. In July of 1991, she saw Howell shooting a machinegun on the back portion of the commune property. She knew it was a machinegun because it functioned with a very rapid fire and would tear up the ground when Howell shot it. Mrs. Bunds also told me that Howell had fathered at least fifteen (15) children from various women and young girls at the compound. Some of the girls who had babies fathered by Howell were as young as 12

years old. She had personally delivered seven (7) of these children.

According to Ms. Bunds, Howell annuls all marriages of couples who join his cult. He then has exclusive sexual access to the women. He also, according to Mrs. Bunds, has regular sexual relations with young girls there. The girls' ages are from eleven (11) years old to adulthood.

On January 6, 1993, I interviewed Deborah Bunds again in Los Angeles, California. I showed her several photographs of firearms and explosives devices. She identified an AR-15 rifle and a pineapple type hand grenade as being items which she had seen at the Mount Carmel Center while she was there. She stated that she saw several of the AR-15 rifles and at least one of the hand grenades.

On January 7, 1993, I interviewed Deborah Sue Bunds in Los Angeles, California. She was the wife of David Bunds, and she had been a member of the "Branch Davidian" since birth. She stated she first met Vernon Wayne Howell in July 1980. When Howell assumed leadership of the "Branch" in Waco, Texas, in 1987, he began to change the context of their Doctrine. While she was at the Mount Carmel compound in Waco, Texas, she was assigned, under Howell's direction, to guard duty with a loaded weapon. About February 1989, she observed Howell shooting a machinegun behind the main structure of the compound. She is sure the firearm was a machinegun because of the rapid rate of fire and the rate of fire was much different from that which was usually conducted during practice exercises on the compound. After describing the firing of this weapon to me, I believe that Ms. Bunds was describing the firing of an automatic weapon.

Mrs. Deborah Bunds also told me that during an evening meal a short time after having seen Howell shoot the machinegun, she overheard Howell and his closest associates discussing machineguns. Howell was very excited about having a machinegun. He voiced a desire to acquire additional machineguns, specifically AK-47 type machineguns.

During this investigation I made inquiries of a number of law enforcement data bases for information about those commune residents who I have been able to identify. Through TECS I learned that some forty (40) foreign nationals from Jamaica, United Kingdom, Israel, Australia and New Zealand have entered the United States at various times in the past and have used the address of the Mount Carmel Center, Waco, Texas, as their point of contact while here. According to INS records most of these foreign nationals have over stayed their entry permits or visas and are therefore illegally in the United States. I know that it is a violation of Title 18, United States Code, Section 922 for an illegal alien to receive a firearm.

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On January 1, and January 3, 1993, Mrs. Poia Vaega of Mangere, Auckland, New Zealand, was interviewed telephonically by Resident Agent in Charge Bill Buford, Bureau of Alcohol, Tobacco and Firearms, Little Rock, Arkansas, who also is assisting me in this investigation. The results of Special Agent Buford's interview on January 1, 1993, was reduced to writing and furnished to me. Special Agent Buford's interview on January 3, 1993, was tape recorded with the permission of Poia Vaega and has since been transcribed and typewritten. Both the tape recording and the transcription was furnished to me by Special Agent Buford. Both interviews with Poia Vaega revealed a three month imprisonment for a term of three and one half (3 1/2) months which began in June of 1991 and physical and sexual abuse of one of Mrs. Vaega's sisters, Doreen Saipaia. This was while she was a member of the "Branch Davidian" at the Mount Carmel Center, Waco, Texas. The physical and sexual abuse was done by Vernon Wayne Howell and Stanley Sylvia, a close follower of Howell, on several occasions.

It was learned from Mrs. Vaega that she and her husband, Leslie, were also members of Howell's group in Waco for a short period of time in March 1990. Upon their arrival at Mount Carmel Center, she and her husband were separated and not allowed to sleep together or have any sexual contact.

According to Mrs. Vaega, all the girls and women at the compound were exclusively reserved for Howell. She stated that Howell would preach his philosophy, which did not always coincide with the Bible, for hours at a time. She and her husband left the compound after ten (10) days because her husband did not agree with Howell's doctrine, but that her two sisters stayed behind.

Mrs. Vaega also related that she was present at one of the study periods held by Howell when Howell passed his personal AK-47 machinegun around for the group to handle and look over.

On January 6, 1993, I received the results of an examination conducted by Jerry A. Taylor, Explosives Enforcement Officer, Bureau of Alcohol, Tobacco and Firearms, Walnut Creek, California, in response to a request from me to render an opinion on device design, construction, functioning, effects, and classification of explosives materials which have been accumulated by Howell and his followers. Mr. Taylor has received extensive training in Explosives Classification, Identification and rendering safe of explosive devices and has been recognized on numerous occasions as an expert witness in Federal Court. Mr. Taylor stated that the chemicals Potassium Nitrate, Aluminum, and Magnesium, when mixed in the proper proportions, do constitute an explosive as defined by Federal law. He further stated that Igniter cord is an explosive. Also Mr. Taylor stated that the inert practice rifle grenades and hand grenades would, if modified as weapons with the parts available to Howell, become explosives devices as defined by Federal law. Finally he stated that black powder, is routinely

used as the main charge when manufacturing improvised explosive weapons such as grenades and pipe bombs. I know that Title 26, United States Code, Section 5845 makes it unlawful for a person to possess any combination of parts designed or intended for use in converting any device into a destructive device. The definition of "firearm" includes any combination of parts, either designed or intended for use in converting any device into a destructive device such as a grenade, and from which a destructive device may be readily assembled. See United States v. Price, 877 F.2d 334 (5th Cir. 1989). So long as an individual possesses all of the component parts of a destructive device even though it is not assembled, so long as it can be readily assembled. United States v. Russell, 468 F.Supp. 322 (D.C. Tex. 1979).

On January 8, 1993, I interviewed Marc Breault in Los Angeles, California. He is an American citizen who lives in Australia with his wife Elizabeth. He was once a member of the "Branch Davidian" in Waco, Texas. He lived at the Mount Carmel Center from early 1988 until September 1989. While there he participated in physical training and firearm shooting exercises conducted by Howell. He stood guard armed with a loaded weapon. Guard duty was maintained twenty-four (24) hours a day seven (7) days a week. Those who stood guard duty were instructed by Howell to "shoot to kill" anyone who attempted to come through the entrance gate of the Mount Carmel property. On one occasion, Howell told him that he wanted to obtain and/or manufacture machineguns, grenades and explosive devices. Howell stated he thought that the gun control laws were ludicrous, because an individual could easily acquire a firearm and the necessary parts to convert it to a machinegun, but if a person had the gun and the parts together they would be in violation of the law. On another occasion, Howell told him that he was interested in acquiring the "Anarchist's Cook Book", which I know is a publication outlining clandestine operations to include instructions and formulas for manufacturing improvised explosive devices.

On January 12, 1993, I spoke with Special Agent Earl Dunagan, Bureau of Alcohol, Tobacco and Firearms, Austin, Texas, who is assisting me in this investigation. He related the results of his inquiry to the ATF Firearms Technology Branch, Washington, D.C., for an opinion concerning the firearms parts which have been accumulated by Howell and his group. Special Agent Dunagan stated that he had spoken with Curtis Bartlett, Firearms Enforcement Officer, Washington, D.C., and was told by Officer Bartlett that the firearms parts which Howell has received and the method by which he has received them, is consistent with activities in other ATF investigations in various parts of the United States, which have resulted in the discovery and seizure of machineguns. Mr. Bartlett stated that the firearms parts received by Howell could be used to assemble both semi-automatic firearms and machineguns. He has examined many firearms which had been assembled as machineguns which included these type parts.

Mr. Bartlett also told Special Agent Dunagan that one of the vendors of supplies to Howell has been the subject of several ATF investigations in the past. ATF executed a search warrant at this company and had seized a number of illegal machineguns and silencers.

Special Agent Dunagan told me that on January 12, 1993, he spoke with Special Agent Mark Mutz, ATF, Washington, D.C., who was the case agent on the above ongoing investigation dealing with the illicit supplier who has provided gun parts to Howell. Special Agent Mutz stated that during the execution of the Federal Search Warrant at the company's office in South Carolina, he saw large quantities of M-16 machinegun and AK-47 machinegun parts. The company maintained their inventory of these parts as "replacement parts" so they fell easily within a loophole in the Federal law which prohibited ATF from seizing the parts. Special Agent Mutz stated that the company had all the necessary parts to convert AR-15 rifles and semi-automatic AK-47 rifles into machineguns if their customers had the upper and lower receivers for those firearms. Based on my investigation, as stated above in the description of gun parts shipped to Howell, I know that Howell possesses the upper and lower receivers for the firearms which he is apparently trying to convert to fully automatic.

Mr. Bartlett told me that another one of the vendors of supplies to Howell, Nesard Gun Parts Co., 27 W. 990 Industrial Rd., Barrington, Ill., has also been the subject of an ATF investigation. Officer of that company, Gerald Grayson Cynthia Aleo and Anthony Aleo all pled guilty to ATF charges. The Nesard Co., which owned Sendra Corporation, was shipping AR-15 receivers through the Sendra Corp., along with part kits from the Nesard Co. When these parts are assembled it resulted in the manufacture of a short barreled rifle. Even though the above subjects are convicted felons they continue to conduct business because the Nesard Gun Parts Co., distributes gun parts and not firearms.

On January 25, 1993, I interviewed David Block in Los Angeles, California. He stated that he was a member of Howell's cult at the Mount Carmel Center, Waco, Texas, from March 1992, until June 13, 1992. During the time he was there, he attended two Gun Shows with Vernon Howell, Mike Schroeder, Paul Fatta, and Henry McMahon who is a Federally licensed firearms dealer. The gun shows were in Houston and San Antonio, Texas.

While at the Mount Carmel Center he saw a metal lathe and a metal milling machine which were normally operated by Donald Bunds and Jeff Little. Donald Bunds, a mechanical engineer, has the capability to fabricate firearm parts, according to Block. On one occasion at the Mount Carmel Center, he observed Bunds designing, what Bunds described as a "grease gun/sten gun" on an Auto Cad Computer located at the residence building at the compound. The computer has the capability of displaying a three dimensional

rendering of objects on a computer monitor screen. The object appeared to be a cylindrical tube with a slot cut into the side of it for a bolt cocking lever. Bunds told him that Howell wanted Bunds to design a "grease gun" which they could manufacture. Mr. Block told me that on another occasion at the Mount Carmel Center he saw Donald Bunds designing a template which Bunds explained was to fit around the "grease gun" tubes indicating where the bolt lever slots were to be milled out. This was another step in manufacturing "grease guns" which had been requested by Howell. I know that a "grease gun" is a machinegun following after the design of a World War II military weapon.

During his time at the Mount Carmel Center Mr. Block was present several occasions when Howell would ask if anyone had any knowledge about making hand grenades or converting semi-automatic rifles to machineguns. At one point he also heard discussion about a shipment of inert hand grenades and Howell's intent to reactivate them. Mr. Block stated that he observed at the compound published magazines such as, the "Shotgun News" and other related clandestine magazines. He heard extensive talk of the existence of the "Anarchist Cook Book".

Mr. Block told me that he observed a .50 caliber rifle mounted on a bi-pod along with .50 caliber ammunition. However, what Mr. Block described to ATF Agents, was a British Boys, .52 caliber, anti-tank rifle (a destructive device). Mr. Block further stated that he also heard talk of the existence of two additional .50 caliber rifles on the compound. There was also extensive talk about converting the .50 caliber rifles and other rifles to machineguns.


Mr. Block also told me that he met James Paul Jones from Redding, California, who was visiting the Mount Carmel Center in April or May of 1992. According to Howell, Jones was a firearms and explosives expert.

On February 22, 1993, ATF Special Agent Robert Rodriguez told me that on February 21, 1993, while acting in an undercover capacity, he was contacted by David Koresh and was invited to the Mount Carmel compound. Special Agent Rodriguez accepted the invitation and met with David Koresh inside the compound. Vernon Howell, also known as David Koresh played music on a guitar for 30 minutes and then began to read the Bible to Special Agent Rodriguez. During this session, Special Agent Rodriguez was asked numerous questions about his life. After answering all the questions Special Agent Rodriguez was asked to attend a two week Bible session with David Koresh. This was for Special Agent Rodriguez to learn the 7 Seals and become a member of the group. Special Agent Rodriguez was told that by becoming a member he (Rodriguez) was going to be watched and disliked. David Koresh stated that Special Agent Rodriguez would be disliked because the Government did not consider the group religious and that he (Koresh) did not pay taxes or local taxes

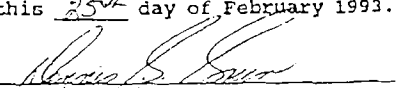
because he felt he did not have to. David Koresh told Special Agent Rodriguez that he believed in the right to bear arms but that the U.S. Government was going to take away that right. David Koresh asked Special Agent Rodriguez if he knew that if he (Rodriguez) purchased a drop-in-Sear for an AR-15 rifle it would not be illegal, but if he (Rodriguez) had an AR-15 rifle with the Sear that it would be against the law. David Koresh stated that the Sear could be purchased legally. David Koresh stated that the Bible gave him the right to bear arms. David Koresh then advised Special Agent Rodriguez that he had something to show Special Agent Rodriguez to see at that point he showed Special Agent Rodriguez a video tape on ATF which was made by the Gun Owners Association (G.O.A.). This film portrayed ATF as an agency who violated the rights of Gun Owners by threats and lies.

I believe that Vernon Howell, also known as David Koresh and/or his followers who reside at the compound known locally as the Mount Carmel Center are unlawfully manufacturing and possessing machineguns and explosive devices.

It has been my experience over the five years that I have been a Special Agent for the Bureau of Alcohol, Tobacco and Firearms, and that of other Special Agents of the Bureau of Alcohol, Tobacco and Firearms, some of whom have the experience of twenty (20) years or more, who have assisted in this investigation that it is a common practice for persons engaged in the unlawful manufacture and possession of machineguns and explosive devices to employ surreptitious methods and means to acquire the products necessary to produce such items, and the production, use and storage of those items are usually in a protected or secret environment. It is also my experience that persons who acquire firearms, firearm parts, and explosive materials maintain records of receipt and ownership of such items and instruction manuals or other documents explaining the methods of construction of such unlawful weaponry.

  
Davy Aguilera, Special Agent  
Bureau of ATF

Subscribed and sworn to before me this 25<sup>th</sup> day of February 1993.

  
Dennis G. Green,  
United States Magistrate Judge  
Western District of Texas - Waco

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## WACO ADMINISTRATIVE REVIEW

## MEMORANDUM OF INTERVIEW

PAGE: 1

Date: June 13, 1995

FILE TITLE: [REDACTED] PAC WITNESS: [REDACTED] TITLE SPECIAL AGENT DATE OF INTERVIEW JULY 22, 1993 INTERVIEWING AGENTS: RALPH A. GONZALES	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: [REDACTED]

Date of Interview: July 22, 1993

Report prepared by: Ralph Gonzales

Contact Address:

Contact Phone Number: [REDACTED]

This is a subsequent interview with SA [REDACTED]. He was not present during the May 18th meeting with ASAC Sarabyn. The contents of this report of interview contains information relevant to the surveillance/undercover operation.

The 3270 status reports taken from the surveillance logs were typed by Diana House and Reynatta LNU from the Houston Office. They alternated every two (2) weeks to assist the Austin Office with their administrative workload. After the reports were typed SA D. Littleton was responsible for reviewing the reports and signing them. [REDACTED] only reviewed the first week of reports. This was too much of a load for [REDACTED] and so after Littleton took over as supervisor over the undercover agents, [REDACTED] was no longer involved with the surveillance/undercover operation.

According to [REDACTED] the operation was always both surveillance and undercover. [REDACTED] requested that SA Robert Rodriguez of McAllen be included as one of the undercover agents. The rest of the agents were selected by the Houston District Office.

A week into the operation, [REDACTED] noticed a box containing approximately 50 rolls of exposed film taken by the undercover agents. Since it was obvious that no arrangements had been made to have the film processed, [REDACTED] packaged it up and sent it to the ATF Photolab in Maryland. Approximately 3 or 4 weeks later, [REDACTED] received a telephone call from a male photolab technician. The technician told him that most of the film had been processed and that it was of very poor quality. Approximately 7 rolls were not developed. All of the remaining undeveloped film taken by the undercover agents for the remainder of the operation were not processed until the week of 07/12/93. According to [REDACTED] there are hundreds of photographs of the Davidians working and playing outside. There are also photographs of the undercover meetings which took place outside the compound. These photographs are being held as evidence and are available at the Waco ATF Office.

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FILE TITLE: [REDACTED] RAG	DATE: June 13, 1995
INTERVIEWING AGENT: RALPH A. GONZALES	WACO ADMINISTRATIVE REVIEW

Investigative notes:

Related investigatory material:

24-809 2901

## WACO ADMINISTRATIVE REVIEW

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## MEMORANDUM OF INTERVIEW

Date: June 13, 1995

FILE TITLE: [REDACTED] SGR WITNESS: [REDACTED] TITLE: CASE AGENT DATE OF INTERVIEW: JUNE 8-9, 1993 INTERVIEWING AGENTS: SUSAN G. ROWLEY	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: [REDACTED]

Date of interview or action: June 8 &amp; 9, 1993

Report prepared by: S/A Susan G. Rowley and S/A Ralph A. Gonzales

Contact Address: [REDACTED]

Austin, Texas 78759

Contact Phone Number: [REDACTED] (Austin RAC office)  
 [REDACTED] (Pager)  
 [REDACTED] (Waco Office)  
 [REDACTED] (Waco Temporary Residence)

Work Experience: [REDACTED] stated that he went into the Marine Corps after high school and was stationed at the American Embassy in Tokyo as an Embassy Marine Guard. He first became interested in law enforcement on this assignment. He attended Southern Illinois University and graduated with a BA in History. He speaks Japanese and Spanish. While in college, he spent a little time with the auxiliary police. He started with the Border Patrol in 1984 and was stationed in Harlingen, Texas until 1987. In May 1987, he was hired by ATF in Brownsville, Texas, then transferred to McAllen, Texas, then transferred to his present post at Austin, Texas. He has been in the Austin office since 1989.

Before this investigation, he had no knowledge of a cult calling itself the Branch Davidians. His first knowledge of possible violations by the Branch Davidians came in the form of a handwritten note from Charlie Meyer, one of the senior agents in the Austin office. The note asked him to call Chief Deputy Dan Weyenberg at McLennan County Sheriff's Office, Waco, Texas. The note (Exhibit 1) states that firearms and parts are being shipped to the MagBag and to the Branch Davidian Compound through UPS. The note says to talk with Bert Reyna, a Probation officer in Waco whose secretary's husband has information about UPS deliveries to the Mt. Carmel Center. The note also asks [REDACTED] to check with Jim Skinner in ATF Compliance who is checking names and businesses.

Approximately one week after receiving the note from Charlie Meyer, [REDACTED] contacts Weyenberg and meets with him on 5/26/92. Weyenberg tells him that he should meet and work with Lt. Barber.

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FILE TITLE: [REDACTED] SGR	DATE: June 13, 1995
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On 5/27/92, [REDACTED] contacted ATF Compliance Officer Jim Skinner and asked him for the status on requests for local FFLs providing black powder to the compound. Officer Skinner gave [REDACTED] a list of possible sellers in the Waco area.

On 6/4/92, [REDACTED] met with AUSA Bill Johnston in Waco before his meeting with Lt. Barber at McLennan County Sheriff's Office. Johnston told him that [REDACTED] someone was going to do something with this information. [REDACTED] felt like it was going to be a big case. Johnston told [REDACTED] that the Sheriff's Office, the McNamaras in the Marshal's Office, and Blossman in US Secret Service all had information on the compound. Blossman's information was about a neighbor's daughter who had wanted to join the compound, and her parents were able to talk her out of it. [REDACTED] said that he didn't talk with the McNamaras about their information at that time. When he did meet the McNamaras, they spoke in general terms and they did not seem to have any information which he didn't already have.

On 6/4/92, [REDACTED] met with Lt. Barber who had a lot of background information which included depositions given to DPS intelligence from ex-cult members. These depositions gave him some idea of what Howell was like. Barber had also obtained information from UPS and gave [REDACTED] copies of all of this information including the invoices. Barber stated that the UPS driver, Larry Gilbreath said that the deliveries were made to the MagBag and usually, Bob Kendricks was present to meet the UPS shipments. Kendricks would call someone in the compound and let them know about the shipment and the amount due since most of the shipments were COD. Occasionally, the UPS driver saw guards at the compound and described a "deer blind" which was over the front door of the compound. The UPS driver thought to himself at this point, that this was not normal. Barber had a photo of this which he gave to [REDACTED]. Barber also gave [REDACTED] aerial photos of the compound, including one which showed the burial of the school bus. Lt. Coy Jones may have originally obtained the information from UPS because there were some notes from Lt. Jones in the material. There was also a list of names of persons who may be in the compound. Barber told him that they had originally referred the matter to the FBI, but believed that the FBI had not done anything with that information.

[REDACTED] eventually met up with FBI S/A Freddie Vela in Waco to find out whether he had gathered any other information or was working an active investigation on the Branch Davidians. S/A Vela stated that he had opened a "number" (presumably a case file number) on the Branch Davidians because his HQs wanted him to. S/A Vela had in his possession some photos and a drawing of the compound from Joyce Sparks which [REDACTED] photocopied. The photos were of the bunker area, the kitchen area, and the trap door. S/A Vela stated to [REDACTED] "If you find out anything, let me know." [REDACTED] got the impression that S/A Vela had not done anything and wasn't going to do anything.

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FILE TITLE: [REDACTED] SGR	DATE: June 13, 1995
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[REDACTED] continued to obtain additional invoices from UPS through the McLennan County Sheriff's Office. Since [REDACTED] was 100 miles away in Austin, and the Sheriff's Office had a good rapport with UPS, he felt like this arrangement was agreeable to everyone.

On 6/8/92, [REDACTED] contacted Olympic Arms to get the exact description of the firearms and parts which had been sold to the compound. The Olympic Arms invoice [REDACTED] through to ascertain whether the components necessary to convert a semi-automatic weapon to an automatic weapon had been sold to the compound. There is apparently a loophole in the laws and regulations which allows the gun dealers to use their own descriptions and part numbers which may or may not match a standardized numbering system. [REDACTED] identified himself as an ATF Special Agent to Olympic Arms.

On 6/9/92, [REDACTED] submitted all of the known names of persons and businesses connected with the receiving of firearms to determine NFA checks, FFL checks, and criminal history checks.

On 6/9/92, Lt. Barber contacted [REDACTED] and told him that there was a guy named Henry McMahon who was selling AK-47s out of his Suburban. Lt. Barber had known that [REDACTED] was trying to find an FFL in the local area who had been supplying the compound with arms, ammunition, and/or black powder. A confidential informant of Barber's claimed that McMahon had sold thousands of dollars of firearms to Howell. (The Sheriff's Office would not reveal the identity of the source of information.) Based on this information, [REDACTED] contacted ATF Compliance Officer Jim Skinner and asked him to do a background check on Henry McMahon. Sometime later, [REDACTED] told Skinner that he wanted to have a compliance inspection performed on McMahon and [REDACTED] would go along and pretend to be another compliance inspector. [REDACTED] prepared the initiating report on this investigation (ATF form 3270) on 6/9/92 and included most of the information gathered up to that date. (Copies of all of the ATF 3270s are in the Volumes given to the Review Team by ATF and are a very good chronology of [REDACTED] investigation)

The normal routing for an ATF report of investigation is as follows:

1. This type of report would originate with the case agent ([REDACTED]);
2. Be approved by his first line supervisor (in this instance the Resident Agent in Charge: Larry Sparks);
3. Be submitted for approval to the Special Agent in Charge (Chojnacki) through the Assistant Special Agent in Charge (Sarabyn).
4. The Special Agent in Charge (SAC) would forward the report to the appropriate Headquarters area for information or monitoring.

This particular report was prepared by [REDACTED] approved by Sparks and forwarded to the SAC/Houston. On 6/17/92, the SAC Chojnacki faxed some handwritten notes (Exhibit 2) concerning this investigation to the RAC/Austin

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FILE TITLE: [REDACTED] SGR  
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Larry Sparks. These notes concerned some suggestions which Chojnacki felt should be followed and also included the information that the SAC/Houston office had changed the classification of the case from "general" to "sensitive" which meant that ATF Headquarters would automatically begin monitoring the reports on this investigation. [REDACTED] stated that this fax from Chojnacki was unusual and he initially was upset because he felt like Chojnacki did not have faith in him to do a competent investigation based on some of his suggestions. [REDACTED] [REDACTED] suggestions concerned the assignment of a GS-13 Special Agent to the investigation. [REDACTED] and Sparks discussed this suggestion and Sparks supported [REDACTED] as the case agent, but said that he would assign Wayne Appelt (a GS-13) as co-case agent to appease the SAC. Sparks agreed that Appelt would help [REDACTED], but would not run the investigation. [REDACTED] stated that he did not receive much assistance from Appelt.

On 6/23/92, Robert Souza, an ATF Compliance Officer in Seattle, Washington, telephoned [REDACTED] because he had learned from Olympic Arms that an ATF agent in Austin had been inquiring at Olympic about sales to Howell. Souza related that he had learned that Howell and McMahon had been purchasing receivers and firearms which had been shipped to them.

Sometime in August, a meeting was held with the UPS supervisor who agreed to cooperate with law enforcement. Sparks, [REDACTED], Lt. Coy Jones and Lt. Barber attended this meeting.

In August, Sparks was temporarily transferred to Houston as a result of an Internal Affairs investigation and Earl Dunagan became the Acting Resident Agent in Charge/Austin. [REDACTED] stated that Dunagan was very helpful to him in this investigation.

On 7/21/92, [REDACTED] interviewed Robert Cervenka who verified that he had previously heard automatic gunfire and 50 cal. fire coming from the compound area. (Note: The 50 cal. gun sales to the compound were not documented until after the raid when the seller called ATF.) Cervenka stated that he was familiar with both sounds because of his Army experience. Cervenka cultivated the land around the compound just outside of the compound property

**SENSITIVE MATERIAL - REDACTED**

On 7/22/92, [REDACTED] forwarded a request to the ATF Headquarters Chief of Explosives for a determination and evaluation of possible explosives manufacture based on the components received at the compound. On Tuesday,

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FILE TITLE: [REDACTED] SGR	DATE: June 13, 1995
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7/23/93, [REDACTED] forwarded a request to the ATF Headquarters Chief of Firearms for a determination and evaluation of possible automatic weapons manufacture/conversion based on the firearms and components received at the compound. (Both requests are attached as Exhibit 3)

A compliance inspection was arranged for 7/30/93 at the residence of McMahon, which was also his business premises. Compliance Officer Skinner and [REDACTED] (who was undercover as Skinner) performed the inspection. The audit revealed that McMahon's records were not in order, but [REDACTED] did not want reprimands at this time to avoid McMahon from becoming too suspicious. The audit revealed that 36 firearms had been sold to Howell and additional firearms had been sold to other cult members by McMahon. The records showed that the firearms were purchased at gun shows. (Apparently, showing the sale of firearms at gun shows is one way that FFLs get around some of the ATF regulations.) There were approximately 65 lower receivers in McMahon's records which were not in his stock/inventory. When asked about their location, McMahon replied that they were being stored at his preacher's house. McMahon offered to get them for them. They asked for the identity of his preacher and he stated David Koresh. [REDACTED] stated that McMahon definitely did not offer to take them to the preacher's house, rather he offered to have the receivers brought to them. When asked "Who's this Vernon Howell?" McMahon stated that he was just a friend of his and never volunteered the fact that Howell and Koresh were the same person. It was at this point that [REDACTED] felt like this investigation might lead to a big case. Skinner and [REDACTED] left without pressing too much and Skinner told McMahon that he would be back to give him some regulations regarding recordkeeping. Skinner returned approximately one month later and McMahon had receipts for the sale of 64 lower receivers to Vernon Howell. McMahon and his girlfriend moved to Pensacola, Florida, shortly thereafter.

[REDACTED] was assigned to Secret Service protective details and would be gone for up to three weeks at a time every three weeks during this period continuing until the election in November 1993. [REDACTED] was also carrying a full case load in addition to this case up to November 1992. In November, his other cases were reassigned and he was instructed to work fulltime on this investigation. Phil Lewis is the person responsible for having [REDACTED] cases reassigned. Also during this time, UPS continued to deliver shipments to the compound and give copies of these invoices to Lt. Barber, who supplied them to [REDACTED].

During November 1993, [REDACTED] received a reply from Roy Parker in the Explosive's Section (This reply said that explosives could not be manufactured with the listed materials); interviewed three persons (Andrade, Leak, Ojeda) in California with present and former ties to the compound; and interviewed Sgt. John Hackworth, Laverne, California Police Department who was able to give him a list of names of persons living in a known Branch Davidian house in California.

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FILE TITLE: [REDACTED] SGR	DATE: June 13, 1995
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In late November, early December, information was received about Marshall Keith Butler, a machinist who occasionally does work for Koresh.

On 12/4/92, [REDACTED] asked ATF S/A Carlos Torres to interview Joyce Sparks, an investigator with the Texas Department of Human Services regarding her visits to the compound and her knowledge about the compound.

On 12/9/92, a meeting was held in Houston about the investigation of [REDACTED] and [REDACTED]. The meeting lasted all day and was attended by [REDACTED] Dunagan, Chojnacki, Royster, Lewis, Cavanaugh, Petrilli, Buford, Lattimer, Williams, Carter, and John Henry. Sarabyn was not at this meeting, as he was TDY to HQs. [REDACTED] and Dunagan gave an extensive oral briefing and answered many questions. Photos and maps were given to the participants and copies of the 3270s were later made and distributed. There were questions about violence and [REDACTED] stated that there was a high potential for violence and indicated that Koresh's personality had been changing to a more violent character. There were questions about the religion and whether there were any parallel groups in operation. The participants asked [REDACTED] to obtain topographical maps, aerial photos, and infrared photos. They talked about setting up a command post and staging area; obtaining a pen register and trap & trace, as well as telephone tolls. They also talked about luring Koresh away from the compound as a strong option. [REDACTED] stated that he had an idea for a diversion that he brought up at the first meeting, but it was rejected. [REDACTED] idea was to have three helicopters appear to go down near the ridge line close to the compound and then explode some C-4 explosives making it appear that the helicopters had crashed. He felt this would draw the people in the compound outside. [REDACTED] was told at this meeting that his job from now on would be to obtain the probable cause necessary for a search warrant.

After this initial meeting, there was a meeting every two weeks. [REDACTED] stated that ASAC Sarabyn would call from time to time and was totally up to date on this investigation.

[REDACTED] had asked Lt. Barber if he could locate a place to set up a command post and a staging area. On 12/8/92, Lt. Barber introduced [REDACTED] to Pat McGee, the airport manager at TSTC. [REDACTED] Brzozowski, O'Flaherty, Viegra, and Shidler met with Pat McGee. [REDACTED] stated that McGee was told nothing about the operation, but did know that [REDACTED] was with ATF.

On 12/11/92, [REDACTED] met with Sgt. Hackworth in California who gave him more information and organized an introduction for him with Robyn Bunds, Jeanine Bunds, David Bunds, and Deborah Bunds. Sgt. Hackworth also told [REDACTED] about Marc Breault, the former cult member now residing in Australia. Reports were initiated on the intelligence gained by these interviews and was also passed on to the team leaders as he received it.

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## MEMORANDUM OF INTERVIEW

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FILE TITLE: [REDACTED] SGR  
 INTERVIEWING AGENT: SUSAN G. ROWLEY

DATE: June 13, 1995  
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On 12/15/92, [REDACTED] submitted a list of names and addresses to Sandy Betterton who is the Intelligence Research Specialist in Houston. Betterton was able through various computer checks to find approximately 40 persons suspected of being in the United States illegally through visa overstays. [REDACTED] spoke to Immigration & Naturalization Service (INS) sometime after learning this information. Also on 12/15/92, [REDACTED] submitted a list of names to ATF HQs Intelligence Section and asked for any information which they might have on the Branch Davidian Cult. (ATF may have no additional information on the Branch Davidians)

On 12/15/92, [REDACTED] learned from Sgt. Hackworth that Marc Breault was supplying information about the cult and the compound to Mark England at the Waco Tribune. Based on this information, [REDACTED] decided to telephone Breault "cold" and try to persuade Breault to stop supplying Mark England and to begin supplying him with any information. Breault agreed to this request and thereafter began faxing information to [REDACTED] on a regular basis. [REDACTED] stated that Breault's motivation for supplying information was that he felt that Koresh was taking everyone for a ride and he felt responsible for the recruitment of some of the Australians who were still at the compound. [REDACTED] requested Breault to draw a chart of the command structure in the compound listing the persons in command. [REDACTED] also asked Breault for a list of names and addresses of former cult members.

On 12/17/92, a second meeting on this investigation was held in Houston. This meeting was attended by basically the same persons, but also included Ivan Kallister from HQs. and Col. Lon Walker, the ATF DOD liaison officer assigned at ATF HQs. Col. Walker stated that DOD could support this operation, but needed some drug activity to justify their involvement.

[REDACTED] was told to actively ask about any drug activity on the compound after this meeting, and as a result, Breault related the circumstances about the methamphetamine lab to [REDACTED]. In addition to the meth lab, ATF Intelligence Research Specialist Betterton ran computer checks on the names and addresses of persons believed to be in the compound and came up with some prior drug records. [REDACTED] stated that in the Bunds custody hearing records, there was mention of the fact that Howell/Koresh stayed awake ranting and raving for long periods of time. The Bunds felt like Howell/Koresh may have been utilizing the meth lab for himself. This last information from the Bunds was not utilized as justification for DOD support. [REDACTED] never wrote any letters requesting DOD assistance in this investigation. However, copies of the letters were in his file which he gave to us. (Exhibit 5)

On 12/28/92, there was a third meeting in Austin attended by [REDACTED], Dunagan, Brzozowski, Lattimer, King, Petrilli, Sarabyn, Williams, Buford, Cavanaugh, and maybe Shidler. [REDACTED] Dunagan, and Brzozowski took the participants to Waco to look at the compound. [REDACTED] believes that they met Mr. [REDACTED] on this trip and negotiated his consent for the undercover

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house. Brzozowski took care of the details on obtaining the undercover house and Viegra made the initial contacts with the Texas National Guard for aerial photographs.

The undercover house was initiated on Monday, 1/11/93 and the complaining began almost immediately from the agents assigned. After the first week, [REDACTED] went to the undercover house and listened to the complaints. [REDACTED] had them to document the significant events as well as the traffic coming and going. They had started to put insignificant things in the logs like the sighting of a dog on the property. [REDACTED] had initially wanted to oversee and be a part of the undercover house, but because of the tremendous amount of work involved in the probable cause search, he did not have the time. There was a Monday morning meeting a week after the undercover house started which was attended by [REDACTED], Dunagan, Appelt, Littleton, Brzozowski and Rayburn. The purpose of this meeting was to appoint one or two control agents for the undercover house. Appelt and Littleton were appointed to handle that assignment. Littleton was told to work things out or replace the "bitchers and moaners". Littleton was also supposed to pick up the undercover logs every other day and synopsize the logs into a 3270 report. [REDACTED] told Littleton "Make sure when you get the written logs to give them to me for the case file." It was at this point that Littleton told [REDACTED] that since he was putting the information from the logs into the reports, he was shredding the surveillance logs. Littleton said to [REDACTED] "We won't need them". [REDACTED] expressed some concern about the way the undercover house was operating but did not have the time to keep that close an eye on it. [REDACTED] stated that in his opinion, Rodriguez was the only one assigned to the undercover house who was not too scared to go into the compound. He also stated that Sarabyn told Rodriguez that he did not need to wear a body wire or transmitter when he went into the compound. [REDACTED] also stated that he had originally requested that Carlos Torres, an ATF agent be assigned the duty of supervising the undercover house, but Torres was unavailable during this time.

[REDACTED] stated that the only discussion about the media that he remembers occurred at one of the Houston meetings. This discussion centered around the need for someone to contact the Waco Tribune in order to delay the publication of the story on the Branch Davidians. At this meeting, he remembers someone saying that if the paper agreed to hold off on the article, that ATF would inform them of the warrant and let them go to the raid but remain out of the way.

On Monday, 1/25/93, [REDACTED] interviewed [REDACTED], a former cult member who was knowledgeable about the conversion of automatic weapons in the compound. At this point, [REDACTED] felt like he had the probable cause necessary for a search warrant. [REDACTED] told [REDACTED] about the milling and lathe machinery on the compound for manufacturing "grease guns". [REDACTED] also talked about manufacturing grenades and nuclear bombs. This interview is documented in an ATF 3270.

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On Monday, 2/11/93, ██████████, Sarabyn, and Chojnacki travelled to ATF HQs and briefed Hartnett and all the HQs Chiefs, with the exception of Conroy who was out of town. There had been an earlier meeting scheduled at HQs, which had been postponed until Monday, 2/11/93. Hartnett asked extensively about the probable cause. Hartnett also wanted to extend the surveillance before executing the warrant. Chojnacki told Hartnett that the indications were that Koresh was not coming out. Hartnett wanted to know if there was any way that Koresh could be lured out of the compound. Hartnett wanted to know why they were going to execute the warrant at 10:00AM. The answer given was because the men are working in the construction area and are separated at the time from the women, children, and the guns. Hartnett wanted to know how many SRT teams were going to be utilized. Hartnett asked ██████████ specifically "How does the AUSA feel about the probable cause?" Hartnett was given a copy of the draft affidavit and stated that he would take it home and read it that night. Hartnett asked what the cost factor was and about where the flashbangs were going to be used in relation to the children's location. ██████████ stated that Dick Garner asked some good questions also, but could not remember them.

On Friday, 2/12/93, ██████████, Sarabyn, and Chojnacki briefed the ATF Director, Steve Higgins in the presence of Hartnett and the other Chiefs. Higgins expressed a lot of concern about the potential for injuries and wanted to make sure that they had everything they needed. Chojnacki stated that they needed some more money and Higgins referred him to Benton who is a financial officer in HQs. Higgins stated that he didn't want anyone getting hurt because of a lack of requested supplies or other items. Higgins asked Chojnacki if he was comfortable with the plan and Chojnacki replied that he was. Higgins asked about the flashbang training and wanted to make sure that they would not be utilized where the children were located.

On Monday, 2/22/93, ██████████ drove ██████████ and ██████████ to be interviewed by Joyce Sparks (DHS) and Beth Tobin (Assistant District Attorney). This interview was to establish probable cause to obtain an arrest warrant for Howell/Koresh on a charge dealing with aggravated sex with a minor. There was not enough evidence obtained through this interview to allow the State to obtain an arrest warrant. There was some thought that the DHS would cooperate in trying to lure Koresh out of the compound if there was a warrant for his arrest. ██████████ stated that both Sparks and Tobin knew that there was going to be some type of action within the week at the compound. ██████████ stated that he emphasized the importance of not repeating this information to anyone for the security of the operation.

On Monday, 2/22/93, ██████████ and Dunagan attended a meeting at the McLennan County Sheriff's Office with Weyenberg, Jones and Barber. Dunagan gave a briefing to them and requested their assistance in supplying manpower for roadblocks, etc. Sheriff Hartwell came in subsequent to the briefing and offered to provide some buses, food, coffee, etc.

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The rest of the week, ██████████ spent working on the search and arrest warrant affidavits with the US Attorney's Office. The judge signed the warrants on Monday, 2/25/93 at about 8:00PM. After the warrants were signed, ██████████, AUSA Johnston, AUSA Phinzy, and Chojnacki went to eat at Chili's and Chojnacki paid for the meals. ██████████ believes that Chojnacki was telling Johnston about the training at Ft. Hood and they also discussed the news article and sending the undercover agent into the compound to get a feel for the climate of the compound after the raid.

██████████ did not stay overnight in Waco until Saturday, 2/27/93. Prior to that time, he drove home to Austin every night. On Friday night, ██████████ drove home to sleep and get his gear. He got a page and was telephoned by Rodriguez on Saturday morning. Rodriguez was concerned about having to go back into the compound that day and the next. ██████████ left Austin around noon and drove to Waco where he checked into the Best Western. After checking in, he drove to the Command Post and was there when the helicopters landed. ██████████ stated that that was the first time he realized that the National Guard was going to be used for the helicopter support. He stated that the ATF bomb trucks were too prominent where they were and asked for them to be moved to a more "out of sight" position.

██████████ attended the briefing at the Best Western Saturday evening and then went to the CP to wait for the call from Rodriguez. Sarabyn, the forward observers, Brzozowski, and O'Flaherty were also at the CP Saturday night. ██████████ kept calling the undercover house to find out if Rodriguez was out of the compound. ██████████ finally left the CP between 2-3 AM to go to the motel. He did not sleep well that night and went to the CP around 6:00AM. ██████████ thinks that Rodriguez was at the CP in the morning talking about being nervous about going back into the compound that morning.

Sometime while ██████████ is outside the Command Post talking to his friends, he hears "It's a go". Lt. Barber stops ██████████ before he gets on the helicopter and asked him if this deputy sheriff can go on the helicopter and videotape the raid. ██████████ talked to Lt. Susan Justice to get permission and the deputy is included on the manifest. Later, the newspapers "made a stink" about this person being on the helicopter because he is only a reserve deputy. While ██████████ was in the helicopter, he could not see anything on the ground. He was in a middle seat and there was no place to look. He heard the "pops" of the gunfire. While they were still in the air, Trevino motioned with two fingers and said two agents are down. They landed and could hear the gunfire at the compound after getting out of the helicopter. Chojnacki had a cellular phone with him. When ██████████ got off the helicopter and saw everyone standing around, he got mad. Later, they returned to the CP and Rodriguez was there.

Rodriguez said to ██████████ "I can't believe they went" "I told them ██████████". Then Rodriguez wanted his gun back from ██████████ and they fought about that for a while. ██████████ had borrowed Rodriguez' gun because his was stolen in

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California. About this time, Darrell Dyer came out of the CP and said "Do what I tell you and don't deviate". [REDACTED] Rodriguez, Dunagan, Salas, Dodd, and Lisa (couldn't remember her last name) went to the roadblock at FM 2491 and Double EE ranch road. The shooting was still going on when they first got there, but they could hear that negotiations for a cease fire were taking place.

Cavanaugh and Dunagan had a conversation in which Cavanaugh told [REDACTED] to standby to come in and pick up the wounded agents. Dunagan commandeered an ambulance and started driving down Double EE ranch road. Dunagan was driving, [REDACTED] was on the passenger side, Salas and Rodriguez were in the back. Cavanaugh told them to move to the compound slowly and stop by the bus, which they did. At this point, [REDACTED] said that no one was moving. Cavanaugh said "OK, get up and holster your weapons. Do not make any threatening moves. I've called a cease fire. Don't shoot. Don't run. Move toward the ambulance." Then Pete Mastin stood up and put his hands up and started walking out. Then everyone did the same. [REDACTED] stayed inside the ambulance per his instructions from Cavanaugh while the ambulance was loaded. Someone commandeered the media truck to use for the wounded because the ambulance was full. The ambulance headed for the gate. [REDACTED] got out of the ambulance and a wounded person was put in the passenger side. He looked down at the undercover house and saw the black pickup truck and started running toward it. Cavanaugh said "Don't run, don't run". [REDACTED] saw O'Flaherty and yelled to him to bring the pickup truck in. They put 2 of the dead agents in the truck (one was still breathing at the time) and [REDACTED] tried to go fast in the truck. Someone performed CPR on the agent in the back of the truck until the medivac helicopters got there.

[REDACTED] moved to another roadblock at Mr. Peery's ranch. Buses came and picked up agents, but [REDACTED] stayed at the roadblock. He said that the highest ranking person at the roadblock was Mastin. No one seemed to be taking charge, there were no perimeters set up and [REDACTED] was concerned about the people who were still in the undercover house. At the roadblock, Rodriguez is still talking about how they shouldn't have gone.

Sometime around dark, [REDACTED] went back to the CP and stayed there all night. At the CP, he heard that the FBI was coming in and he also heard that additional SRT teams were coming. He also heard later that negotiations between Howell and Cavanaugh indicated that Howell was talking about coming out shooting to take his people to the hospital in a bus. Because of that threat, he had heard that the people were to be allowed to go. Either Chojnacki or Lewis told him that he had to brief FBI S/A Sykes, which he did around 8:30PM in the squad room. The Kansas City SRT arrived and Chojnacki and [REDACTED] briefed them. When Hartnett arrived, he went into the radio room in the CP and hardly came out. [REDACTED] was never asked to brief Hartnett or Conroy. He left the CP around 5:30-6:00AM. [REDACTED] was asked to drive Hartnett to the gym for the question and answer session on Monday at noon, which he did.

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[REDACTED] was asked when he first realized he was losing control of his investigation. He stated that Larry Sparks had a lot of confidence in him, but when he left and Dunagan became acting RAC, in August or September, he started losing control. The first thing that was taken away was the tactical planning of the warrant. He was told at the Houston meeting that he was only to concern himself with establishing the probable cause for the warrant. He began to get more and more requests for things and follow-up investigations for the case management. It was decided at the Austin meeting that Buford and [REDACTED] would go to California to re-interview 4-5 former cult members to obtain more information about the layout of the compound interior and to obtain more information about the cult itself. The day before the raid, he lost total control of the investigation. He had not even been given an assignment for the execution of the warrant on his own investigation. They told him he could do whatever he wanted to do, so he decided to go in one of the helicopters.

[REDACTED] is currently TDY to Waco for an indeterminate time working on the Paul Fatta prosecution. Fatta turned himself in to the US Marshal's in Houston on 4/26/93. Fatta is not cooperating.

[REDACTED] stated that to his knowledge, only two persons in the compound had jobs outside the compound and they were David Jones, the rural letter carrier, and Wayne Martin, an attorney who had an office in town. He thinks that the office may be in the same building as the District Attorney.

[REDACTED] stated that he believed that the probable cause on this investigation became a reality with the information from the David Block interview, the determination from Jerry Taylor in Explosives (California), and the determination from Bartlett in HQs Firearms. Those three factors helped seal the case for probable cause in [REDACTED] opinion. (Copies of the determinations from Firearms and Explosives are attached as Exhibit 5)

The safe house obtained and used by the agents in the undercover house was at Island Condominiums (Apt. 120). This apartment was obtained by Brzozowski.

[REDACTED] stated that he thought that Sarabyn had a copy of the operational plan (written) and that it had been in a blue folder which everyone had been given. He thought he still had the folder and sent us a copy. (Exhibit 6) The information sent was the medical plan, police, fire, etc.

[REDACTED] was asked about the different agencies who were notified of the raid and the identity of the agencies who were at the Command Post the morning of the raid. He stated that he had notified Immigration & Naturalization Service and he remembers seeing some INS agents there (in particular, Jan Baumgardner); he had notified DEA and he remembers seeing some of the DEA agents there (in particular, Lex Henderson and Delphino Sanchez); he did not notify DPS narcotics, but remembers seeing them there and thinking that DEA must have notified them; he notified IRS, but they were not at the CP in the

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morning before the raid, but did show up later; he remembers seeing AUSA Johnston and Phinizy and the US Marshals (McNamara brothers).

[REDACTED] was asked if he notified the Marshals Service about the raid. He stated that he went to the Marshal's Office on Thursday or Friday and asked for the McNamara brothers. They were not there and he told Alonda (Guilbeau) that "We are going to execute the warrant against the compound on Sunday 7/70". [REDACTED] stated that they were not supposed to go on warrants. So he said "Just have Parnell or Mike call me". Neither one called [REDACTED] but he assumes that someone gave them the information because they were at the CP before the raid. [REDACTED] was asked if he had briefed the McNamara brothers prior to his notification and he said no. He stated that when he was in court, Parnell McNamara asked him when he was going to do the thing on the compound and to be sure to let them know. Because of this conversation, he believed that they were aware of the pending action, but does not know who told them.

[REDACTED] stated that apparently there were a lot of people who knew about the raid that he hadn't informed. He stated that on Thursday or Friday at the courthouse, Phil Reyna with Pre-Trial Services told him to be careful out there. [REDACTED] stated that he thought that Reyna probably knew too, but did not know who had told him. [REDACTED] stated that everytime he told someone about the raid, he told them to keep the information close to guarantee the security of the operation.

The majority of the actions taken and interviews conducted in this investigation were documented by [REDACTED] in ATF reports (3270s) in a timely manner. A lot of the information contained in interview reports was transmitted immediately to the SRT team leaders for their use by telephone. [REDACTED] had his case file with him for this interview and appears to be very well organized and complete.

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Investigative notes:

Issue: I, II, & IV

Related investigatory material:

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## MEMORANDUM OF INTERVIEW

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Date: June 13, 1995

FILE TITLE: [REDACTED] WITNESS: [REDACTED] TITLE: ATF SPECIAL AGENT DATE OF INTERVIEW: JULY 22, 1993 INTERVIEWING AGENTS: KENNETH L. BUCK	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: [REDACTED]

Date of interview: [REDACTED]

Interviewing agent(s): Special Agent Kenneth L. BuckContact Address: [REDACTED]  
Houston, Texas

Contact Phone Number: [REDACTED]

On the above date, ATF Special Agent [REDACTED] was interviewed and provided the following information:

1. [REDACTED] has not attended the advanced undercover school. He understood he was selected for the undercover assignment because he looked like a cowboy and because he was on the SRT team and could be of assistance in evaluating information secured from the surveillance for use in the tactical operation.
2. He understood the assignment was for the purpose of securing probable cause for the warrant and to support a tactical operation (search warrant).
3. The first week of January [REDACTED] went to a meeting in Austin headed by Earl Dunagan. He recalls being told to blend in like college students and to keep an eye on the compound. He stated the agents were to use the cover of TSTC students because those students, unlike Baylor University students, are all ages. The assignment was originally to last two weeks, but was changed to three weeks, then open ended.
4. The teams maintained 24 hour surveillance for approximately two weeks. The teams were on eight hour shifts. Each team tried to maintain at least two of the four team members at the U/C house.
5. Sarabyn visited the U/C house approximately two weeks into the assignment. It was agreed at this point that night surveillance was a waste of time and should be dropped. [REDACTED] does not recall who made the suggestion, but the shifts were changed with one team responsible for the surveillance from noon of day one through noon of day three. At

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- that time there was not a 100% eyeball on the compound. Again they attempted to keep at least two agents at the U/C house at all times. The logs were not as elaborate after the first two weeks, but [REDACTED] does not recall anyone telling the agents to cut back on the entries they were making regarding routine occurrences at the compound.
6. The nature of the assignment did change somewhat after the first two weeks, but not drastically. [REDACTED] did not insist on [REDACTED] into the compound, but did insist. He stated, "we want to [REDACTED] the compound, but use your judgement." At the meeting there was a discussion about what role they should play so the compound members would accept them. It was suggested someone pretend to be a lost soul. They talked about what they had observed over the past two weeks, including not seeing guards, no one occupying the guard shack, not seeing radios or guns and other key items concerning tactical matters. [REDACTED] could not recall if the 10 a.m. time period for all men working at the construction site was discussed, but he said it was a definite pattern. He stated it had to be bad weather to keep the men from working at the site. He stated he was sure they would have told Sarabyn about this routine. He stated people started working at the site before dawn and that most were on the site working by 10 a.m.
  7. [REDACTED] stated the people at the compound should have been out working on Sunday, 02/28/93, because, although it was cool and overcast and there was a little rain, they would normally have been out in those type of conditions. He stated it would have to be pouring rain for them not to come out and work.
  8. [REDACTED] drove a 1992 Blue Chevy Truck registered to Roberto Gonzales. He stated this happen to be the undercover name for Roberto Rodriguez, but that was by accident. He stated his student card at TSTC used a bogus social security number.
  9. [REDACTED] felt there was a lack of supervision in the sense that there was little direction given. The U/C agents were basically told to keep an eye on the compound and hang out. He stated the agents were like props. The objectives were not clarified after the original objectives of determining if there were guards and guns visible.
  10. [REDACTED] stated his only input on the raid was when he was at SRT training at Fort Hood and they were advised to treat the compound members politely. He advised that these people would fight when agents attempted to handcuff them. The agents knew there would be fights breaking out when they executed the warrant.

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11. [REDACTED] stated he did receive information about the cars Koresh drove. He stated several were registered to Koresh. He also saw pictures of Koresh before starting the assignment.
12. [REDACTED] left the surveillance assignment around 02/15/93 in order to prepare for the warrant.
13. [REDACTED] estimated there were 25 children in the compound, 10 women and 25 to 30 men.
14. [REDACTED] stated the U/C house was equipped with a radio scanner, which he did not know how to use, two 35mm cameras, video camera and night vision equipment, which was not powerful enough. The Technical Operations Officers were O.K., but didn't want to stick around long.
15. [REDACTED] does not know of any compound people coming into the U/C house. He said the house was clean and all equipment was kept in one room with a dead bolt lock.
16. [REDACTED] stated the undercover agents were in Waco the week prior to moving into the U/C house and stayed at hotels in Waco under their real names. [REDACTED] stayed at the Hilton.
17. [REDACTED] did not hear a radio conversation between Cavanaugh and Chojnacki concerning whether or not they should execute the warrant.
18. [REDACTED] stated information about Koresh locking up the weapons and that only he had access to the weapons probably came from the undercover agents. He did not know how the information was obtained, but he recalled being given that information by someone in the U/C house.
19. [REDACTED] does not know how information secured by the undercover agents made its way to the raid planners other than the meeting with Sarabyn and his statement regarding fighting with the compound members which he made at Fort Hood.
20. [REDACTED] stated the Austin people were responsible for taking care of all the paperwork.
21. [REDACTED] stated that he heard there was some controversy over the drug connection at the compound. He stated he had identified a drug connection at the compound. He stated the first time [REDACTED] and Rodriguez met Koresh, Koresh talked about how the Sheriff hated him, about machine guns, about watching out for the ATF, the shootout with Roden and about the allegation that there had been a meth lab at the compound. He stated Koresh told them the compound would be a great place for a meth lab because its in the open and the wind blows all the

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. time so no one could smell a lab. [REDACTED] stated Koresh volunteered the story about the machine guns and the meth lab and since ATF thought he was lying about the guns [REDACTED] felt Koresh might have a meth lab on the compound.

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Investigative notes:

Related investigatory material:

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Mr. SCHUMER. Point of clarification.

First, as I understand it, you have the Texas Ranger documents. Second, I would welcome the opportunity to have a joint letter, do a joint letter with Mr. Shadegg with both requests.

Is he willing to do that?

And I yield to him to answer.

Mr. MCCOLLUM. Well, Mr.—

Mr. SCHUMER. It's always good that we should join you in getting your stuff. You never join us in getting our stuff.

Mr. MCCOLLUM. That's not in order at this point in time. You can certainly ask him at some point down the road.

Mr. Shadegg, you are recognized for your 5 minutes.

Mr. SCHUMER. Mr. Chairman, just one other question.

Are we down the road yet?

Mr. MCCOLLUM. It's not in order yet.

Mr. Shadegg is being recognized for his 5 minutes.

Mr. SHADEGG. Thank you, Mr. Chairman, I appreciate it very much. It's not probably too surprising that Mr. Schumer and I differ on some points. Perhaps if he'd been here more of the day, he would not make such a bold statement as that all of the material facts—

Mr. SCHUMER. Point of personal objection.

You know, first of all—wait a second, Mr. Chairman. Point of personal privilege.

Mr. SHADEGG. You made a—

Mr. SCHUMER. Point of personal privilege, Mr. Chairman.

Mr. MCCOLLUM. You may make the point.

Mr. SCHUMER. Fine. The point is, first, I was here for all but 1 hour. I don't know if Mr. Shadegg was, but that kind of ad hominem, unrelated-to-the-issue attack, I would—I would match my knowledge of what happened and what the witnesses said to Mr. Shadegg's any day of the week. We don't need that kind of poison further contaminating the hearings.

And I yield back.

Mr. MCCOLLUM. Well, Mr. Schumer, you made your point of personal privilege, but Mr. Shadegg has a right to make his observations.

So, Mr. Shadegg, you have the full 5 minutes.

Mr. SHADEGG. Thank you, Mr. Chairman.

As someone who spent 8 years of my life in law enforcement, with the Arizona Attorney Intelligence Office and whose father was a deputy sheriff and who believes deeply in their mission, I think what we're about today is extremely important. I think it is important to review incidents of this type to try to assure that they don't go again, that they never occur again.

Mr. Noble, I commend you for starting the process which led to this report. And I commend you for the apparent thoroughness of the report. And if what you are seeking is an attaboy, I'm glad to give you one.

Mr. NOBLE. Thank you.

Mr. SHADEGG. However, if you think that that should be the end of it, that it should never have to be discussed in a hearing such as this, or aired, I think you are mistaken. In your opening statement, you say in this report Treasury presented the full facts to

the American people. You go on to say, therefore, I look forward in the report of these subcommittees to a resounding affirmation of the Treasury report.

Well, I'm willing to give you an affirmation that I'm glad you started the process, but I think you ought to be willing to objectively review it. Let's start with the document we just discussed, the document that details these telephone calls.

You testified in response to questioning by Mr. Chabot that in fact no one in Washington knew that the secret—the intelligence agents who discovered that Mr. Howell was aware the ATF was coming. In point of fact—

Mr. NOBLE. I said before the raid.

Mr. SHADEGG. That's not what you said—

Mr. NOBLE. The record will verify what I said. I said before the raid went bad, that Mr. Rodriguez had come out of the compound saying that Koresh was expecting ATF.

Mr. SHADEGG. Would you agree with me that this document establishes they knew at least contemporaneously with the raid; would you not?

Mr. NOBLE. That they knew at least contemporaneously with the raid?

Mr. SHADEGG. Your own log says that they received a phone call. You said that's this memo. This memo clearly says that Howell knows ATF is coming.

Mr. NOBLE. The memo does not clearly say that. What the memo says is it says that the person whose name is blacked out contacted Washington at 9:55 a.m., Texas time, to report what he had been told—

Mr. SHADEGG. No, it doesn't. It says Vita asked why the teams were going in early and the agent informed him of Howell's comments to undercover.

Mr. NOBLE. That's right. What it doesn't say, sir, with all due respect, what it doesn't say is the precise time that that particular statement was made.

The log says 9:55 a.m. All I'm saying is all I said for the record is my testimony, the best of my knowledge, as honest as I can be, is that ATF headquarters was not told about the contents of Mr. Rodriguez' statement prior to the raid's going forward. That's the best of my knowledge.

Mr. SHADEGG. And this memo is not revealed in your report, and the fact that—

Mr. NOBLE. But the information is consistent.

Mr. SHADEGG. If I could continue.

Within the first 2 days of this hearing, we discovered that Mr. Aguilera had been offered a chance to go in and look at the weapons by Mr. Koresh. Now, he did not take that offer up. That is—although that conversation is discussed at page 26 of your report, in the discussion of Mr. McMahon, the fact that he did not—that he was offered the chance by Koresh to go into the compound and look at the weapons, and the fact that he declined that, is not in the report.

We also learned from Mr. Aguilera that he told Mr. Sarabyn of this offer, he had been offered a chance to go in. Yet although there's a discussion of the conversation with Mr. McMahon, once

again, the fact that he reported this to Sarabyn, that he had been offered the chance to go in and see the premises and see the weapons, is not in the report.

We learned that Mr. Chojnacki and Mr. Sarabyn, in discussing the decision to go forward with the dynamic raid, discussed the fact that Aguilera had been offered the chance to go in and look at the building, and they rejected that and decided not to ever take up Koresh on that offer. Again, that is not in the report.

And we learn in the course of these hearings that there are a number of occasions when Mr. Koresh was off of the premises that are not disclosed in the report. I think when you tell the American people that the full—that the full facts are presented and you look for a resounding affirmation and you find that kind of series of errors, it seems to me that the American people have a right to look beyond the language of the report.

I commend you for starting it, but I think it is important that the American people have the right through the oversight process to go in behind it and to look.

Mr. NOBLE. May I comment briefly?

Mr. SHADEGG. I just want to make a couple more points.

Mr. NOBLE. Well, will I be able to remember all of them?

Mr. SHADEGG. I don't know, but it's my nickel, just like it was Mr. Schumer's.

Mr. NOBLE. OK, so you're going to ask me 20 questions and I'm going to try to remember 20 questions, or can I at least in part?

Mr. SHADEGG. You seem to have been doing quite well all afternoon. None of those were questions, in any event. I think they were mostly my opinion.

There is a statement that you made in your opening statement where you said, point-blank, Mr. Chojnacki and Mr. Sarabyn were fired, and you said, because they refused to give up their guns and badges and agree to stop enforcing the law. That was a direct quote from you in your statement.

That conflicts with your written statement, and yet I listened carefully to what you said in the hearing. I want to know what proof you have or—here is a question you can answer, or attempt to answer.

What proof do you have to give these committees that in fact the reason they were fired was because they refused to give up their guns and refused to continue enforcing the law?

Mr. NOBLE. I'm going to start with the last first, if you don't mind.

Mr. SHADEGG. Please.

Mr. NOBLE. And try to get to the others.

The point I was making in my oral remarks, and to the extent they are different from my written remarks is that I was working most recently on my oral remarks, and I believe I made it clear to the chairman, so I apologize for the inconsistencies, but I promise to reconcile them right now to the extent that I can.

There were a number of reasons why Mr. Sarabyn and Mr. Chojnacki were fired. It's my recollection of the events, and if my recollection is not a 100-percent accurate, please forgive me at this point. But I will follow it up and clarify the written record, if you don't mind, that they had a chance during the settlement discus-



sions to agree to certain conditions, including giving up their gun, their badges, their rank and the right to enforce Federal criminal law, and that they did not agree to that.

So I believe, and again I will let the lawyers clarify the record, this is just based on my recollection, I believe that because they didn't agree to those conditions and since those conditions were the most essential conditions—may I continue to answer even though the red light's on?

Mr. SHADEGG. Sure.

Those reasons, the reason you gave is not cited in either of the papers dismissing them or in the settlement agreements when they're rehired, is it?

Mr. NOBLE. I'm just telling you of what my understanding was of the final settlement package, and whether or not these conditions were offered previous to the final settlement package. I may be wrong on it.

Let me just tell you what was important, most important to me. In the report on pages 182 and 183, we say that any individual whose judgment or integrity cannot be trusted by those who must rely on those qualities, must be removed from a position of discretionary authority. That's all the report wanted to say with regard to that. I'll ask the lawyers to amend my statement if my recollection doesn't reflect reality.

Mr. SHADEGG. Fair enough.

Mr. NOBLE. With regard to the report's not mentioning the number of times Mr. Koresh left the compound, I take issue with you. I can't remember the footnote or the page, but again I will cite that later, I cited it earlier during this hearing. With regard to your overarching comment about what I expected from these hearings, I will tell you what I expected. I endorse your right to have hearings. I embrace it. But what I expected to happen was that this document, a very comprehensive document that you've made better with the points that weren't included that you believe ought to have been included, when Chief Heineman says we included too much, it's too long as it was, that people would write the reports differently perhaps, if you were authoring it you might write it differently, you might have included certain facts that I excluded, there were thousands and thousands and thousands of pages of memorandums of interview that form the basis for this report. I expected this Congress to closely scrutinize it, assuming that it was generated in good faith, assuming that it was not a product that was designed to cover up.

That if you found details that you thought should be included, you would say, Mr. Noble, Director Magaw, whoever generates a report again, make sure that when you have a log you include this fact, make sure when you have a footnote you don't put it in this place, make sure that you do A, B, C or do—A, B, C or D, that you would give us constructive feedback, not that we would be defending the integrity of a report that no one has challenged but those criticized in it. Thank you.

Mr. SHADEGG. At no time do I challenge the integrity of the report. I do think there are things that should be brought out.

One last point. In your opening statement, and it shocked me, and I hope it's incorrect and you'll disavow it now—

Mr. NOBLE. Is the red light on?

Mr. MCCOLLUM. It is, Mr. Shadegg, your time really has expired. Make your point.

Mr. SHADEGG. He's that worried about this question? I thought it was a softball.

Mr. MCCOLLUM. Make it and we're going to—

Mr. SHADEGG. You said, and I quote: "I do not believe the people of America need their faith in Federal law enforcement restored." Those were your words.

I assume you didn't mean them because it is absolutely clear to me and the people I talk to in day-to-day life that the people of America do need their faith restored, and that that's why you initiated the report and that's why we're conducting these hearings, that we've got to, if we're to have an ordered society where people obey the laws and respect law enforcement officers and don't meet them with gunfire, we've got to restore the faith of the American citizens in their law enforcement.

Mr. NOBLE. I struggled with that sentence for quite some time.

Mr. SHADEGG. Again, it conflicts with your written report, your written opening statement essentially applauds the hearing.

Mr. NOBLE. No, I didn't—the oral statement didn't take issue with the appropriateness of a hearing designed to help law enforcement officers avoid tragedies like Waco. It doesn't—there's no difference in the oral and written in that regard.

But with regard to your comment about the American public, I thought about that sentence quite a bit and especially with the good old boys roundup and some other unfortunate things that have occurred just as of late. I just hope, I guess in my heart I would rather believe, that the vast majority of Americans have confidence in their Federal law enforcement officers and prosecutors, because I happen to believe the very vast majority of Federal law enforcement officers and prosecutors are good people, are hard working people, risk their lives, are protecting you and me and everyone else.

So maybe I shouldn't have used that sentence because someone could take issue with it right now in light of some comments that I believe are episodic and not systemic. So I take your point.

Now I know the red light is on now.

Mr. SHADEGG. I share your confidence in the law enforcement officers of America.

Mr. SCHUMER. I don't want to stay here any longer. Regular order.

Mr. SHADEGG. But I plead that we do have to restore faith.

Mr. MCCOLLUM. I thank you, Mr. Shadegg. We let you go a little longer. I think of the comments Mr. Noble was making are a very good way to close this hearing, which I even think the minority concludes are true. But on the other hand, we have got another full day tomorrow to go through before we recess.

Mr. NOBLE. Could I ask a point of personal privilege, if that is permitted from a witness?

Mr. MCCOLLUM. Personal privilege from a witness is always taken into account.

Mr. NOBLE. Chairman Zelifff led Mr. Hartnett down the road on a question of a coverup, giving him a chance to say whether or not there was a coverup or wasn't a coverup.

What I would ask this committee, that whatever it decides about a coverup or not, about there being a coverup or not being a coverup, that if it concludes that there was a coverup, that it focuses on me and not the many individuals who dedicated their time and efforts to generating a comprehensive report.

Mr. MCCOLLUM. Let me turn to Mr. Zelifff, if I can.

Mr. ZELIFF. May I respond, may I have the time?

Mr. MCCOLLUM. You may. But let me say to you that as I recollect it, because the coverup word was first used in response to a question that had been asked by Ms. Jackson Lee, and that I then elicited a comment from Mr. Hartnett on the very first time he appeared before us, not today. During his answer to the questions I asked him the other day, he said after it was all said and done, that the word "coverup" was probably not appropriate. He didn't mean that.

What he meant, as I understood it, and he meant it again today, is that he felt that what you and the rest of that "60 Minute" interview said with regard to the element of surprise and some other things, that the ATF officers were directed not to proceed with the raid without surprise, and that the spin came down that way, that somehow you were cutting the cord between the ATF agents and yourself.

Mr. NOBLE. Today he expressly said, I watched it, I watched it in shock, my mother called me up afterward. So there's no doubt in my mind what he said today.

All I am asking is after the evidence is settled, if you conclude that there was a coverup, which I don't think you will, that you point it on me and not the people who dedicate their lives to this report.

Mr. ZELIFF. If I could just mention, and it's a good point to bring out, the President's criticism as well. We don't like what we think are unfair irresponsible comments. Really what we're doing is trying—we have all the faith and the trust of those wonderful law enforcement people who risk their lives 24 hours a day, 7 days a week.

What we're trying to do, and I think when you and others say that, hey, this blue book is a Bible, don't question it, it's perfect, well, we have oversight responsibility and we have a right to ask the questions. You who investigate yourselves may do a perfect job. But I think that there is some evidence that has been brought out here that some things may have been missed.

And I think we're all trying to do the same thing here. And I think at the end here we will have credibility, and I don't think anybody is going out to try to go after you or go after anybody else for that matter.

Mr. CONYERS. Mr. Chairman.

Mr. ZELIFF. We're just trying to get at the truth.

Mr. MCCOLLUM. Mr. Conyers.

Mr. CONYERS. As the ranking member on the Democratic side, I want to thank you for a very long day's hearing. I think you've conducted it very well.

I especially want to say that these two witnesses have been here off and on since 3:30, answering questions from 32 members of two different committees.

They've been before this committee longer than any other witnesses here. And I think that we should recognize the incredible stamina and ability to respond as best they can.

I notice that the Under Secretary has committed himself to a number of further details in writing, which will be submitted to the committees, and I thank them very, very much.

Mr. MCCOLLUM. Mr. Conyers, we do thank them for that.

I'd just like to state one note. While they've been here a long time and they deserve thanks for that, I don't think they've been here longer than some others. We have had some pretty long times and breaks that lasted quite a long time so far already.

And speaking of that, we're going to have to announce our schedule here. I will, in a moment, announce the schedule, then I'll let you have a moment, Mr. Scott, but not for much. Not for much discussion, let's put it that way.

Mr. SCOTT. It's just—

Mr. MCCOLLUM. Just a little tiny bit? Take it right now.

Mr. SCOTT. Mr. Chairman, earlier today I asked Mr. Noble to respond to a question to review some material and respond. I think he has subsequently responded.

Mr. MCCOLLUM. He did, he's already done that.

Mr. SCOTT. And therefore that will not be necessary.

Ms. JACKSON LEE. Can I have a little tiny bit, Mr. Chairman?

Mr. MCCOLLUM. If it is nothing more than the type of thing Mr. Scott did, Ms. Jackson Lee.

Ms. JACKSON LEE. Mr. Chairman, because you elicited my name on information that I queried one of the witnesses regarding the coverup, let me thank you for clarifying.

I hope—I don't know how much further we'll go on this issue, but I hope that we can clarify or at least put on the record, however, comments might have been made out of emotion or whatever else, what you take the brunt, Mr. Noble, that we all are thinking that there is not or has not been a coverup. I think that is the clarification that was being made.

Mr. MCCOLLUM. Well, I don't think we're going to take any votes, Ms. Jackson Lee. The bottom line in this is that we're going to issue a report later, we don't need to get into a discussion of this or interpret what the witnesses had to say or intended today. The record really speaks for itself.

I was simply making a point to Mr. Noble in response to his point of personal privilege, as did Mr. Zeliff, of how all of this language got started. There still was an obvious problem and disagreement between quite a number of the witnesses, including Mr. Hartnett, over certain aspects of what they thought was right or wrong. We know that, that's on the record—

Mr. NOBLE. The three people who criticized is quite a number, I agree.

Mr. MCCOLLUM. And so consequently we're at that stage where we're not going to—

Mr. MICA. Mr. Chairman, one point. The other side had three.

Mr. MCCOLLUM. Well, Mr. Mica, we're not here to make a lot of points now.

Mr. MICA. No, it's not another point. But I did not complete a number of very serious questions I have relating to personnel and civil service matters, hiring—

Mr. MCCOLLUM. Would you like to submit some questions for the record?

Mr. MICA. I will submit that, and I am announcing today that in September or October, if I do not get sufficient answers to those personnel questions and civil service questions, there will be hearings on this subject.

Thank you.

Mr. MCCOLLUM. Thank you, Mr. Mica.

The hearing begins tomorrow at 9:30 a.m., start in this committee room. We'll have a break in the afternoon for a briefing. I'm not exactly sure what time it will occur, sometime late in the afternoon.

We will go until panel C is finished, which will probably be very late tomorrow evening. On Wednesday we're going to have a 9 a.m. start. I want everybody to be aware of that, because we're going to have to take a break shortly before 11 o'clock for a joint session. But we wanted to get started, we've got a long day of hearings. We'll resume approximately 12:30 that day.

And on Thursday, because of the Government Reform and Oversight Committee's hearings that they have to have, which we already knew about, we will not have a day of these hearings. That means we will go on Friday and Monday, according to the schedule.

Mr. SCHUMER. Question, Mr. Chairman.

Mr. MCCOLLUM. You may ask a question, Mr. Schumer.

Mr. SCHUMER. Yes, Mr. Chairman, first, I was going to ask it of Mr. Shadegg, but he's gone already, so I will ask you. Is it possible, I've talked this over with a number of people in the minority, since Monday is a day which we don't have votes, and I don't need an answer now, that instead of going Monday, we go Tuesday when we do have votes and all have to be here? We're going to all be here Friday when there are no votes on the floor, but—

Mr. MCCOLLUM. Well, Mr. Schumer, we want to accommodate to a large extent, but right now both Chairs, I think, are inclined to suggest that you be prepared for Monday, because there are reasons from the scheduling standpoint of the committees, and so forth, that is highly improbable that this will be changed.

Mr. SCHUMER. Well, if the scheduling issue is changed, I just ask both Chairs to consider it.

Mr. MCCOLLUM. Certainly.

I understand very well.

This hearing is in recess until tomorrow.

[Whereupon, at 9:28 p.m., the subcommittees adjourned.]